CASES

DISPOSED OF BY THE

SUDDER FOUJDAREE ADAWLUT OF BOMBAY.

COMPILED BY

JAMES MORRIS,

FIRST ASSISTANT REGISTRAR TO THE SUDDER ADAWLUT.

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CASES

DISPOSED OF BY THE

SUDDER FOUJDAREE ADAWLUT OF BOMBAY,

IN JULY 1856.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges. 1856 July 2.

[Case No. 119 of the Calendar of the Ahmedabad Sessions Court for 1855. Committed by the Third Assistant Magistrate, H. B. LINDSAY, on the 16th October 1855. Tried by the Assistant Session Judge, C. WALTER, on the 23rd and 24th October 1855. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.] AHMEDABAD.

Prisoner.—Huree Roopa, Rajpoot, aged 33. Fraud.

Charge.—Fraud; in that, in Sumvut 1911, Bhadrupud Shood 7th, (Monday, September 17th, 1855,) in the daytime, within the limits of Veerumgaum, one Chugun Peetamber gave him a packet containing Sicca Rs. 175, with directions to convey it to the firm of Tutachund Kesreesing, in Ahmedabad, but which the prisoner fraudulently appropriated to his own use.

C. Walter, Assistant Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner pleads not guilty to the charge of fraudulently appropriating a sum of money from complainant. The evidence of four witnesses proves the delivery of the money to prisoner with a letter, while the correspondence recorded puts the fact of the sending of the money beyond a doubt. The letter being found in prisoner's

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AHMEDABAD.

Fraud.

house completes the evidence. It is extraordinary that prisoner should have not destroyed the evidence of his guilt; and the Court would have doubted his having retained the letter, had the evidence regarding the finding of it left any loophole for the supposition that complainant himself could possibly have thrown it down there.

The prisoner's defence is a simple denial that he received the money. If the receipt, therefore, is proved, there can be no question as to the misappropriation of the same. There are certain objections raised in prisoner's written defence, which it remains to notice as they are numbered.* Objections 1 and 3 are explained and accounted for in complainant's own deposition. Objections 2 and 4 are trivial objectious; 5 is simply false. With regard to objection No. 6, both partners having come in evidence, complainants would not, unless necessary, bring forward their Goomashta, who would be required to mind the shop; besides, prisoner

* The objections alluded to were as follows :—1. That if complainant's statements that he had previously made arrangements with him to take the money were true, he would not have sought to employ the witness Chugunlal. 2. That it was extraordinary that complainant should have sent the money by him at all. 3. That having arranged to give him 8 pice originally, there was no occasion for a settlement outside the gate of how much he was to receive. 4. That if he trusted him with the money, why was he so suspicious as to bring people to witness the delivery? 5. That his partner Jugjeevun does not support his statement. 6. That he has not called his Goomashta to give evidence. 7. That there were irregularities in the preliminary investigation. 8. That it was improbable that he, if he had appropriated the money, should have hid the letter under a grain vat. 9. That the papers of the account book produced are not numbered. 10. That there is a double account for 8th Bhadrupud Shood, the latter of which shows a much larger balance on that date. 11. That complainant, &c. were on one occasion gambling, and that he merely caught them, and they then told him they would ruin him. 12. That witness Koober Joita has once been charged with robbery. 13. That no receipt for the money was taken from him.

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Fraud.

himself is averse to his being called in evidence now. With regard to the irregularities in the preliminary investigation noticed (No. 7) in prisoner's defence, the Court imagines it would have been more regular, in the absence of the Joint Police Amuldar and Police Amuldar, for the depositions, &c. to have been taken before the Mookhee of the place, instead of before a Karkoon not authorised to administer solemn affirmation. This comes within the province of the Magistrate. Objection. No. 8 has already been noticed by the Court above; and if it is true, as mentioned in objection No. 9, that the pages of the account book, produced by complainant, are not paged, objection No. 10 (that there is a double account for 8th Bhadurwa Wud) resolves itself into a mistake, as has been pointed out to prisoner's Vakeel. Objections 11 and 12 are simple assertions, brought forward without proof. With regard to the last objection, the Court does not think that it follows at all that a receipt should have been taken from prisoner, a simple carrier. The defence to the charge is utterly insufficient, and the Court consequently convicts the prisoner of fraud; in that, on 7th Bhadrupud Shood, Sumvut 1911, (17th September 1855,) in the daytime, one Chugun Peetamber entrusted him, outside the town of Veerumgaum, with a packet containing Sicca Rs. 175, and a letter, with directions to deliver it to the firm of Tutachund Kesreesing, in Ahmedabad, which he did not do, but appropriated the sum to his own use.

And the Court, having found the prisoner guilty as above, and considered the nature of the offence committed, and the punishment provided therefor in Regulation XIV. of 1827, Section XLI., proceeds to pass the following sentence:—

That you, Huree Roopa, be imprisoned and kept to hard labour for the period of one (1) year, and that you do further pay a sum of Co.'s Rs. 163-8-2, or Sicca

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Fraud.

Rs. 175, to be recovered, in default of payment, by distress and sale of your goods, at the order of the Court (Act XVI. of 1850); the same, if recovered, to be paid to complainant.

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—It appears in this case, that, in the absence of the District Police Officer and Joint Police Officer, a Karkoon took down the depositions, and, with the Mookhee's son, the Mookhee himself being absent, went and searched the prisoner's house, in which the letter of advice to Futehsing Kesreesing, so damnatory of the prisoner, was found. This, the Assistant Session Judge says, was not regular, but he passes it over as coming within the province of the Magistrate. The Court cannot pass it over so easily, for, when the finding the paper was the only circumstance in corroboration of the oral evidence in the case, the Sessions Court could not be too jealous in seeing that everything was conducted in proper form. With this impression, the Court require further information in the case; they would like to know who Bawa Moteeram and Koober Joita are,—whether they are considered people of character in Veerumgaum, and how often they have appeared within the last twelve months as witnesses in the Court at Veerumgaum. They also desire to have their explanation of how they were going out of the town, at so unusual an hour, for the purpose they assign. The Court, further, would like to know how often, within the last year, the complainant has sent money in this same way, and whether the names of the witnesses are entered in his 'nondwuhee,' in every instance.

It would be desirable to have proof whether prisoner, as he says, caught the complainant and others gambling; what character he has borne since he has been in the Moonsiff's service; how often he has been sent to attach property for complainant, and whether any question or

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difference has arisen on any occasion. The Court, with this information before them, will be better prepared to dispose of the case.

The Session Judge will also be pleased to report on the assertion in the prisoner's petition that his and his father-in-law's property has been attached on account of the fine.

Further Proceedings by the Assistant Session Judge.— The Court has taken what further evidence suggested itself on the points mentioned in the Court's extract.

The proceedings are, therefore, returned for transmission, with all the papers of the case, to the Session Judge. With regard to the last paragraph of the extract, it appears that, when sentence was passed, an English letter was written as usual from the Session Judge's Court, communicating the result to the Magistrate, and on the 27th October 1855 the Acting Session Judge wrote to the Magistrate, requesting him to enforce the payment of the fine therein specified.

The Assistant Magistrate sent Rs. 40 on the 26th December 1855, and Rs. 4-13-7 on the 25th February 1856, to be disposed of as the Court thought fit. These rupees were paid by the order of the Court, through the Veerumgaum Moonsiff, to complainant. In sending the Rs. 40 the Assistant Magistrate wrote that the sum was found, on search, in the roof of prisoner's house, and the Rs. 4-13-7 were sent as realised from prisoner's property.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—Extract from the further proceedings of the Assistant Session Judge's Court in the case of the withinnamed prisoner, together with the original case and his petition, are herewith certified to the Court of Sudder Foujdaree Adawlut.

The Session Judge has the honour to state that it does not appear from the Magistrate's report that the prisoner's

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father-in-law's property has been attached, but the prisoner's own property has been attached, and the amount realised by the sale thereof has been paid to the prosecutor.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut.—The case certainly is an extraordinary one, and had the assertions of the prisoner, Huree Roopa, in his petition to us been borne out, I should have felt myself obliged to have declared that I could not believe the evidence, and have ordered his discharge. As it is, I am quite ready to receive the Assistant Session Judge's appreciation of the evidence, and to reject the petition.

R. Keays, Puisne Judge.

The additional evidence now taken appears to me to be quite sufficient to justify us in upholding the conviction. The two parties who witnessed the delivery of the bag to the prisoner appear respectable people, and not in the habit of giving evidence in the Moonsiff's Court. The Moonsiff says that, within the last twelve months, one of them only has appeared twice, on both which occasions the verdict was given in favour of the party for whom his testimony was received; so that his evidence must have been believed. The Soucar's nondwuhee shows that on two other occasions he sent money to Ahmedabad in the same way, and on both occasions entered the names of the witnesses in the book.

The rest of the assertion of prisoner regarding the gambling transaction and the enmity is, by his own showing, false; and I think, under these circumstances, we should reject the petition.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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POONA.

[Case No. 41 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, W. M. COGHLAN, on the 26th May 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 28th and 29th May 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Acting Session Judge.]

Escape from Custody after Sentence.

Prisoners.—No. 1, Mahomed Salee, Chinaman, Mahomedan, aged 35.
2, Mahomed Poteh, *alias* Pongleem Poteh, Mahomedan, aged 40.

Charge.—Escape from custody after sentence (Regulation XIV. of 1827, Section XXIV.); in that you, Mahomed Salee, being under sentence of transportation by the Recorder of Prince of Wales' Island, for the term of fourteen years, did, on Thursday, the 10th April 1856, (corresponding with Bresputwar, Chuitru Shood 8th, Shuké 1778,) make your escape from the fort of Poorundhur, in the Poona Zillah, where you were in lawful custody, upwards of nine years of your term of punishment being at the time unexpired; and that you, Mahomed Poteh, *alias* Pongleem Poteh, being under sentence of transportation by the Recorder of Prince of Wales' Island, for the term of twenty-one years, did, on the above date, also make your escape from the fort of Poorundhur, in the Poona Zillah, where you were in lawful custody, upwards of thirteen years of your term of punishment being at the time unexpired.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners are charged with escape from custody after sentence, and plead guilty.

They are convicted on their own confessions, confirmed after hearing the evidence in the case (which, if admitted to be true, would prove the charge) read over

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POONA.

Escape from Custody after Sentence.

to them, of escape from custody after sentence; in having, prisoner No. 1 (Mahomed Salee), being under sentence of transportation by the Recorder of Prince of Wales' Island, for the term of fourteen years, on Thursday, the 10th April 1856, (corresponding with Bresputwar, Chuitru Shood 8th, Shuké 1778,) made his escape from the fort of Poorundhur, in the Poona Zillah, where he was in lawful custody, upwards of nine years of his term of punishment being at the time unexpired.

And prisoner No. 2 (Mahomed Poteh, *alias* Pongleem Poteh), being under sentence of transportation by the Recorder of Prince of Wales' Island, for the term of twenty-one years, on the above date, also made his escape from the fort of Poorundhur, in the Poona Zillah, where he was in lawful custody, upwards of thirteen years of his term of punishment being at the time unexpired.

The Peon who was on guard over the prisoners at Poorundhur was, it appears, asleep, and the door of the place in which they were confined left open; and that they should have taken advantage of circumstances so favourable for effecting their escape is not, therefore, to be wondered at.

Wrote a letter to the Magistrate, forwarding an extract from proceedings of this date.

After considering the nature of the offence committed, and the punishment provided for the same by Section XXIV. Regulation XIV. of 1827, the following sentence is passed:—

That you, Mahomed Salee, and you, Mahomed Poteh, *alias* Pongleem Poteh, do suffer each of you one (1) month's solitary imprisonment, at the expiration of the punishment to which you have been respectively sentenced by the Recorder of Prince of Wales' Island. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

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POONA.

Escape from Custody after Sentence.

Resolution of the Sudder Foujdaree Adawlut.—It appears that the prisoners in this case, being under sentence of transportation, were placed in the fort of Poorundhur, and that on one occasion, the door of their apartment being left open, and the Peon or Peons on guard being asleep or absent, the prisoners left the place. The Court cannot hold this to be an escape from custody, for no restraint was broken through, and the sentence is annulled.

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POONA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 32 of the Calendar of the Poona Sessions Court for 1856. Committed by the Deputy Magistrate, NANA MOROJEE, on the 5th May 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 8th, 9th, and 10th May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of Koowursing bin Prubhatsing, and the other prisoners, excepting Shunkrajee Ramchundra Kasheekur.]

Conspiracy.

Prisoners.—No. 1, Shunkrajee Ramchundra Kasheekur, Brahmin, aged 58.

2, Vishnoo Keshow Aptay, Brahmin, aged 22.

3, Koowursing bin Prubhatsing, Purdesee, aged 40.

4, Ragho Balajee Babooleekur, Brahmin, aged 24.

5, Govind Pandoorung Goklay, Brahmin, aged 22.

Charge.—Conspiracy (Regulation XVII. of 1828, Section I.); in that, under date 20th February 1856, (Magh Shood 15th, Shuké 1777,) in the city of Poona, they combined together, and, with the intention of injuring the complainant Narainrao Venaik, got up against him a false case of "appropriation of another's property

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POONA.

Conspiracy.

by breach of trust," acting their respective parts as specified below.

Prisoner No. 1 (Shunkrajee) instigated the following prisoners and others to give false statements before the Foujdar of Poona, as respectively set opposite their names.

Prisoner No. 2 (Vishnoo) gave in a false deposition, on solemn affirmation, before the Foujdar of Poona, to the effect that complainant had obtained turbans, 'sarees,' &c., worth Rs. 54, on or about the 5th February 1856, under a promise of either buying or returning them, but that, instead of so doing, he had appropriated them, and denied all knowledge of the transaction.

Prisoner No. 3 (Koowursing) gave in a false deposition, on solemn affirmation, before the Foujdar of Poona, to the effect that a person like the complainant took away from the foregoing prisoner Vishnoo a bundle of clothes.

Prisoner No. 4 (Ragho) gave in a false deposition, on solemn affirmation, before the Foujdar of Poona, to the effect that, on the 17th February 1856, between 9 and 10 o'clock A.M., he heard the foregoing prisoner Vishnoo demand some clothes from the complainant, and the latter promise to return them the following morning.

Prisoner No. 5 (Govind) gave in a false deposition, on solemn affirmation, before the Foujdar of Poona, to the effect that, on or about the 17th February 1856, complainant sold him two turbans for Rs. 13-8-0, the same being from amongst the clothes the foregoing prisoner Vishnoo alleged to have entrusted to the complainant.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners are charged with conspiracy, and plead severally not guilty.

They are accused of having combined together to

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POONA.

Conspiracy.

lodge and give evidence regarding a false charge of fraudulently detaining some sarees and turbans against one Narainrao Venaik Ghotowdekur, a Sirdar of the Third Class, with a view to injure him.

Prisoner No. 1 (Shunkrajee) is said to be a bitter enemy of Narainrao's, and to have instigated the others to prefer the false complaint; and of the others, prisoner No. 2 (Vishnoo) was selected to prefer the charge, and prisoners No. 3 (Koowursing), No. 4 (Ragho), and No. 5 (Govind) to give evidence in support of it.

All these prisoners are implicated by the evidence of the two pardoned accomplices, Gopal Luxoomun and Naraindas bin Govindram; and, although there are discrepancies in their statement, they are most fully corroborated (except in that of prisoner No. 1, Shunkrajee) by the evidence of Ramjee, Mahadeo, Vittul, Babajee, and Vissajee (witnesses Nos. 13, 14, 15, 16, and 17), which establishes that of the articles said to have been made over to Narainrao, and which he is accused of having fraudulently detained, three sarees and one turban were sold or pawned to others by Vishnoo himself (prisoner No. 2), or Gopal* Govind, and two white turbans were made over to prisoner No. 5 (Govind), in order to his deposing that they had been sold to him by Narainrao.

It consequently follows that the charge against Narainrao, preferred by prisoner No. 2 (Vishnoo), and the evidence given in support of it by prisoners No. 3 (Koowursing), No. 4 (Ragho), and No. 5 (Govind), is false, as the complainant solemnly affirms; and the evidence of the pardoned accomplices (above referred to), and of Eelaicheegeer and Vishnoo Narain (witnesses Nos. 19

* This individual was a prisoner before the Deputy Magistrate, but was discharged for want of proof. The Session Judge would have recorded his evidence in the case, but found, on inquiry, he has absconded. It appears from the Deputy Magistrate's proceedings that it was to him Vishnoo (prisoner No. 2) pawned the red turban.—*Acting Session Judge.*

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Conspiracy.

and 20), leaves no doubt on the mind of the Session Judge that they combined together to lodge this false complaint, and give this false evidence with a view to injure him.

The evidence of the pardoned accomplices is not, however, sufficiently corroborated as regards prisoner No. 1 (Shunkrajee), who is accordingly acquitted; but, with reference to the strong suspicion existing against him, he is made over to the Magistrate for precautionary measures, under the provisions of Section XLI. Regulation XIII. of 1827.

With the exception of the prisoner No. 4 (Ragho), who states he gave his deposition under the influence of 'ganja' (which is proved by the evidence of the Joint Police Officer, witness No. 8, not to have been the case), the other prisoners adhere to the statements contained in their depositions, which have been shown above to be false, and they call no witnesses for their defence.

They are, therefore, convicted of conspiracy; in having, under date 20th February 1856, (Magh Shood 15th, Shuké 1777,) in the city of Poona, combined together, and, with the intention of injuring the complainant Narainrao Venaik, got up against him a false case of appropriation of another's property by breach of trust.

And after maturely considering the nature of the offence committed, the punishment provided for the same by Section II. Regulation XVII. of 1828, and the degree of guilt attaching to them respectively, the following sentence is passed :—

That you, Vishnoo Keshow Aptay, be imprisoned, with hard labour, for three (3) years, and pay a fine of five hundred (500) rupees, or be further imprisoned, with hard labour, for one (1) year; and that you, Koowursing bin Prubhatsing, you, Ragho Balajee Babooleekur, and you, Govind Pandoorung Goklay, be each of you imprisoned, with hard labour, for two (2)

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POONA.

Conspiracy.

years, and pay a fine of two hundred and fifty (250) rupees each, or be further imprisoned, with hard labour, for one (1) year.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause for interference in this case; but they think that the conviction of Shunkrajee might have been obtained.

The Session Judge is to be informed that he should not have recorded the written defences Nos. 26, 28, and 31; and that the Court are not prepared to agree with him that the Magistrate acted illegally in giving a certificate of pardon to the approvers. It is not absolutely necessary that an accomplice should now, as before A. D. 1838, have had a certificate of pardon; but the Court see nothing in the Regulation or Act to prevent the Magistrate from giving one if the approver insists on it. The pardon might now be disturbed, which it could not have been before Act XV. of 1838 was passed, so that accomplices gain nothing by having certificates.

1856 July 2.

SHOLAPORE.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 11 of the Calendar of the Sholapore Sessions Court for 1856. Committed by the Third Assistant Magistrate, J. A. G. DUFF, on the 20th February 1856. Tried by the Session Judge, T. A. COMPTON, on the 9th and 10th April 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, under the provisions of Section III. Act IV. of 1849, by the Session Judge.]

Murder.

Prisoner.—Bundoo wulud Mugdoom, Mussulman, aged 45.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, about 3 o'clock A. M., on Saturday, the 16th February 1856, (corresponding with Magh Shood 11th, Shuké 1777, Sunwar,) in his own house, in the village of Akolee, Talooka Mohol, in

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SHOLAPORE.

Murder.

T. A. Compton,
Session Judge.

the Zillah of Sholapore, wilfully, and without justifiable cause, deprived his wife Humbeera, aged thirty-five, of life, by wounding her on the head with a sword, from the effects of which wound she died within an hour or so afterwards.

Finding and Sentence by the Sessions Court.—The prisoner, Bundoo wulud Mugdoom, is charged with murder, and pleads not guilty.

From the evidence of Vittojee wulud Khundojee (witness No. 6), the Police Patel of the village, it appears that about 4 o'clock A. M., on the morning of the 16th February 1856, he, and others who were in the village Chowree, heard a disturbance in the direction of the prisoner's house, and, on going there, he (Vittojee) affirms that he found the prisoner sitting on the ground, with a drawn sword in his hand, and his wife, the deceased Humbeera, lying near him, as if asleep. Seeing the drawn sword in his hand, he states, they were afraid to enter, but at daybreak, the prisoner having laid down the sword, they went into the house, and saw the deceased Humbeera lying dead in a pool of blood.

The prisoner endeavoured to get hold of his sword, but they seized him by the wrist, and took him to the Chowree. Vittojee (witness No. 6) adds that the prisoner at once admitted having killed his wife, and stated that he would give his reasons to the authorities at the proper time, but afterwards asserted that he had killed her when under the influence of a fit ('phépré').

The Inquest Report (No. 5), proved by the witnesses Bapoo and Rama (Nos. 3 and 4), shows that there was a long sword-wound running transversely across Humbeera's head, some seven or eight inches long, and amply sufficient to have caused death very speedily. The prisoner fully admits having inflicted this wound, and the only question that remains is to determine the precise state of the prisoner's mind at the time.

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SHOLAPORE.

Murder.

The witnesses Nos. 7 and 8 (Bhow wulud Rutajee, and Tookaram wulud Dharoo), who accompanied the Police Patel to the prisoner's house on hearing the disturbance, corroborate his (the Patel's) statement that they did not see the prisoner sitting with the drawn sword in his hand, but admit that they took the Patel's word for it, and in all probability were too frightened to approach very near. The prisoner's trowsers were covered with blood, as well as the sword; and Bhow deposes that he seemed sad and dejected, and out of his mind, while Tookaram avers that he looked wild and excited.

All affirm that the deceased was a woman of quiet, inoffensive habits, and irreproachable conduct; that she was supposed to be on the best possible terms with her husband; they never heard of any quarrel or disagreement between them, and are unable to assign any satisfactory reason for the murder.

It seems clearly established that the prisoner made no endeavour to conceal the body, or to deny the fact of his having killed his wife, and permitted himself to be apprehended and taken to the Chowree without offering any resistance.

The Police Patel (witness No. 6) affirms that the prisoner is a man of good character, and has never been accused of any crime; that he has never seen him under the influence of a fit (phépré), but that the deceased Humbeera told him, two years ago, that the prisoner was then suffering from one; and the witness No. 14 (Shreedhur) states that he saw him in a fit at that time, and pulled him away from the fire in the cooking-place.

The daughter of the prisoner, Koolsoom (witness No. 9), the daughter-in-law, Zora (witness No. 10), and his two sons, Mahomed and Huzrut, all of whom live in the house, throw very little light on the matter, and either did not, or pretend that they did not see the

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blow struck. Their statements, moreover, are extremely conflicting. Koolsoom at first deposed before the District Police Officer that the prisoner became angry with the deceased, drew his sword, and *began to strike*, on which her sister became frightened, and Humbeera (the deceased) thereupon told them all to go out of the house. Before the Assistant Magistrate she stated that Humbeera told them to go out because the prisoner seemed *mad*. She now states that Humbeera sent them out because her little sister (a child of two years) was crying; that she knows nothing of any quarrel having taken place between her parents, and that the prisoner is subject to fits every two or three months.

Zora (witness No. 10) asserts that she knows nothing whatever about the matter, and was not in the house on the night in question.

Mahomed (witness No. 11), one of the prisoner's sons, aged twenty, deposes that his father is subject to fits (phépré), and that on the night in question Humbeera said to him, " Your father is yawning, and the fit is coming upon him ; you had better take the children away"; upon which he went out with all the prisoner's children. He states that his father was first attacked with (phépré) fits some four years ago, and has since been subject to them every two or three months ; that he at first foams at the mouth and falls down insensible, and, when he recovers consciousness, becomes quite mad ; and that he has, during these fits of temporary insanity, wandered to other villages.

Huzrut (witness No. 12), another of the prisoner's sons, aged eighteen years, states that his father is liable to fits at the changes of the moon ; and the witnesses Nos. 13 and 14 (Chandbhaee and Shreedhur) give similar evidence. Shreedhur, who lives close to the prisoner, heard the deceased cry out " Save me" about two hours before daybreak, and on calling out to the

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prisoner to know what was the matter, the prisoner replied, "Nothing." Suspecting something wrong, he cried out loudly, on which the Police Patel and others came to the house, and Shreedhur then saw the prisoner sitting on the ground with a drawn sword in his hand.

The Acting Civil Surgeon* (witness No. 15), who has had the prisoner under his observation for some time, is unable to give a decided opinion on the matter, but thinks the prisoner is *not* subject to epilepsy, and that, if he is ever attacked by fits, they are, in all probability, induced by his addiction to 'ganja.'

The prisoner either had a fit, or pretended to have one, in the Jail, on one occasion; but, from the evidence of the Jailor (witness No. 16), it seems difficult to determine whether the attack was real or feigned. The Jailor deposes that he was making a great noise, and rolling on the ground, and that his eyes were red and inflamed, but that he appeared sensible enough. The First Hospital Assistant, who applied a blister to the back of the prisoner's neck, did not see him while he was outrageous, and his evidence has, therefore, not been taken.

The prisoner, who appears to be now perfectly sensible,

* *Deposition of the Civil Surgeon.*—The prisoner at the bar has been under my observation since the 26th February, in consequence of a letter sent to me by the Session Judge, requesting me to ascertain the state of his mind, and whether he was subject to epileptic fits. The prisoner has been from the first in perfect health, but the only peculiarity I have noticed in his conduct is fastidiousness about diet. On the night of the 3rd of April he disturbed his fellow prisoners by his noisy and excited conduct. On this I caused him to be taken into the Hospital, to watch the nature of his attacks more closely. Two nights after he had a similar attack, shouting loudly, and throwing himself about furiously, but I was not sent for. On my questioning him the following morning about the attack, he seemed quite unconscious of what had passed. I do not think the prisoner is subject to epilepsy, but I am unable to give a decided opinion. He appears to me perfectly sane, and is in excellent health. He is addicted to the use of ganja, and his fits may only be the result of intoxication.

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but wears a sad, dejected appearance, at first stated before the District Police Officer of Mohol that he had a dispute with his wife, who said something or other to him so exasperating that he unsheathed his sword and wounded her with it; but he could not, or would not, state what it was that she said to him. He then stated that he accidentally struck his wife with his foot in getting into bed, on which she gave him abuse, which so enraged him that he killed her. Further on he said that his wife had employed sorcery against him, and rendered him insane, and that when she abused him he lost all self-control.

He now states that it was not till he was nearing Sholapore, to take his trial, that he became aware of his position, and that he was charged with murder; that *people tell him* he is subject to fits, and he knows nothing whatever of anything that occurred on the night of his wife's death.

The Session Judge is of opinion that the case is one of considerable doubt and difficulty, and considers it by no means satisfactorily established that the prisoner was not in his right mind, and therefore an irresponsible being, when he killed his wife.

Taking into consideration, however, the various circumstances of the case, the fact that there is no evidence to show that any quarrel took place, or that any ill-feeling existed between the prisoner and his wife, the apparently total absence of premeditation, and the fact that she is stated to have been a woman of irreproachable conduct; that he was found seated near the body with a drawn sword, and made no attempt to conceal his crime in any manner, coupled with the assertions of his children and the other witnesses that he is subject to fits, the Session Judge considers that it would be unsafe in the extreme to assume that he was in his sound senses when he committed the deed, and to record against him a verdict of wilful murder.

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The Court inclines to the opinion that, owing to the prisoner's immoderate addiction to ganja, he may have been in an irritable state of mind, bordering on insanity, and that his wife may then have made some disagreeable remark, which roused him to fury.

If the prisoner's eldest son, Mahomed, is to be believed, his wife (the deceased) evidently knew that the prisoner would soon be in a dangerous mood by her requesting Mahomed to take the children out of the house when the prisoner began to *yawn* audibly; and the Session Judge is of opinion that the case is one which justifies his recording a special verdict against the prisoner under the provisions of Act IV. of 1849, and detaining him in custody until the pleasure of Government can be known regarding his disposal. The prisoner is accordingly acquitted of the charge of murder.

Forwarded a counterpart of these proceedings, with a letter to the Registrar of the Sudder Foujdaree Adawlut, requesting that they may be submitted to Government, and instructions obtained as to the disposal of the prisoner, Bundoo wulud Mugdoom.

* * * * * * *

It is an argument in favour of the prisoner that the witness No. 7 deposes that he (prisoner) does not cultivate his own field, and that his affairs are managed by his sons.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Session Judge inclines to the opinion that, owing to the prisoner's immoderate addiction to ganja, he may have been in an irritable state of mind, bordering on insanity, and that his wife may then have made some disagreeable remark, which roused him to fury, and on this, which the Court find to be pure assumption, except in so far that prisoner is addicted to the use of ganja, the Session Judge records a special verdict under the provisions of Act IV. of 1849, which,

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from the letter handing up the case, appears to be a verdict of not guilty, on the ground that the prisoner was labouring at the time under temporary insanity.

Prisoner's son, Mahomed, on cross-examination by prisoner, says that, about seven months ago, he went to Koorla and made a disturbance, on which he was apprehended by the villagers, and that he has gone in like manner to other villages seven or eight times. Huzrut says she has known her father act like a madman; Chandbhaee says he has known him go two or three times to other villages while attacked with phépré; but he did not call any of these villagers in his defence, nor did the Session Judge think it necessary to send for any of them. It would, the Court think, be advisable, before sending this case to Government, that the Magistrate should be requested to inquire whether there is any foundation for these assertions, and, if anything really occurred at Koorla, or elsewhere, to try and ascertain what it was.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In reply, the Magistrate has the honour to report that inquiries have been made in the neighbouring villages where the prisoner is well known; the people there say that they have never heard of his having been mad or attacked with phépré.

The villagers of Koorla state that the prisoner was in the habit of coming there to market, &c.; they never heard of his having created a disturbance, or behaved like a madman.

The papers and proceedings in the case are returned.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—With reference to my letter No. 502, of the 20th April last, handing up proceedings held before me in the case of one Bundoo wulud Mugdoom supposed to have murdered his wife when under the influence of an epileptic fit, I have the honour to report, for the information of the Judges, that

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the prisoner in question died of remittent fever at 5 o'clock this morning. 1856 July 2. SHOLAPORE. Murder.

Resolution of the Sudder Foujdaree Adawlut.—The Session Judge reporting the prisoner Bundoo wulud Mugdoom's death, there is no occasion for the Court to proceed further with the case; but the Session Judge is to be informed that, from the proceedings in the case, the Court doubted whether he would be justified in the verdict he had recorded; they, therefore, made a reference to the Magistrate; and from the answer of the Magistrate (copy of which and of the reference are to be sent to the Session Judge), he will see that there is much reason to believe that the assertion of Bundoo's being at times mad was entirely unfounded, and that no special finding ought to have been recorded in the case.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges. 1856 July 2. KAIRA.

[Case No. 75 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate, L. R. ASHBURNER, on the 25th June 1855. Tried by the Acting Session Judge, H. NEWTON, on the 21st July 1855. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner, Kulleeansing Purtabsing.]

Prisoners.—No. 1, Kulleeansing Purtabsing, Kolee, aged 45. Conspiracy.

2, Jethabhaee Oojumram, Brahmin, aged 40.

Charge.—Conspiracy; in having, on or about December 14th, 1850, (corresponding with Magh Shood 10th, Sumvut 1907,) at Napar, in the Kaira Division of the Ahmedabad Zillah, combined together to defraud the Honorable East India Company of a yearly allowance of Rs. 9-1-8, called 'kothlee santh'; in pursuance of which fraudulent purpose prisoner No. 1, on the date and at the place above specified, declared himself to be

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the nephew (brother's son) of one Khoomansing, in whose name the item stood in the Government books, and prisoner No. 2 corroborated this statement, on solemn affirmation; both of them being aware that it was false.

Prisoners plead not guilty.

H. Newton, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The circumstances in evidence against the prisoners are these:—A sum of Rs. 9-1-8 was payable yearly from the Kaira Collectorate to one Bawajee Khoomansing, and this person appears to have received it up to the time of his decease, some twenty-five or thirty years ago, from which date the prisoner No. 1 (Kulleeansing) began to draw it as his heir, and, as no investigation into his claim appears to have taken place, continued to do so until 1850, when, in consequence of inquiries set on foot, this prisoner was ordered to appear at Napar, and establish his title to the annual allowance. It is proved that he was then examined by a Government Officer on the December 14th, 1850, when he stated that he was the nephew (brother's son) of the deceased Bawajee, and named two witnesses who, as he alleged, were aware of his relationship in this degree. One of them was the prisoner No. 2 (Jethabhaee), and the other a man since dead; and both of them testified, on solemn affirmation, that the prisoner No. 1 was the son of the deceased Bawajee's brother. Prisoner No. 1 (Kulleeansing) was again further examined on December 27th, 1850, when he gave his pedigree in full, asserting that Bawajee's father, Khoomansing, had another son, named Purtabsing, who was prisoner's father. In subsequent statements (recorded Nos. 11, 12, and 13) this prisoner is shown to have admitted that he was not the said Bawajee's nephew, and that his grandfather's name was not Khoomansing but Phoolajee, and to have denied his previous statements to the contrary.

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It is thus proved that, in order to secure an allowance to which he wished to establish a legal title, prisoner No. 1 fabricated and told a false story, and that the prisoner No. 2 supported him in this falsehood, by deposing, on solemn affirmation, that it was true. The latter now states that he gave his deposition without any personal knowledge of the matter, and merely on information which he had derived from the other false witness called by prisoner No. 1 (Kulleeansing). But when a man is called to support a falsehood, and gives evidence confirmatory of the falsehood to as great a degree as the deponent had power to confirm it, the law requires for such deponent's exculpation something more than the naked plea that he had stated (apparently as within personal knowledge) matters of which he subsequently admits that he knew nothing. The law has a right to expect that no man will solemnly affirm that of which he has no cognisance; and when any one disappoints this just and reasonable expectation, fraudulent intent must be so necessarily presumed, that the *onus* of rebutting this inference lies on the party who has thus committed himself. It may be further remarked that the prisoner No. 2 (Jethabhaee) did not merely give the general testimony that prisoner No. 1 (Kulleeansing) was Bawajee's heir, but deposed that he was Bawajee's brother's son, that they had lived together, and that prisoner had performed his funeral rites, an assertion which prisoner No. 1 himself does not now put forward, and which the deponent No. 18 falsifies. It appears also that the prisoner No. 2 (Jethabhaee) was brought by the prisoner No. 1 (Kulleeansing) from Asodur to Napar, on the first day of the inquiry, purposely to give the testimony which he subsequently gave, since it is proved that the first statements of the one and the first depositions of the other bear the same date.

The evidence recorded amounts, therefore, in the

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Court's opinion, to proof of conspiracy, of which the prisoners are therefore convicted; in having, on or about December 14th, 1850, (corresponding with Magh Shood 10th, Sumvut 1907,) at Napar, in the Kaira Division of the Ahmedabad Zillah, combined together to defraud the Honorable East India Company of a yearly allowance of Rs. 9-1-8, called kothlee santh; in pursuance of which fraudulent purpose prisoner No. 1, on the date and at the place above specified, declared himself to be the nephew (brother's son) of one Bawajee Khoomansing, in whose name the item stood in the Government books, and prisoner No. 2 corroborated this statement on solemn affirmation; both of them being aware that it was false.

And the Court passes the following sentences, bearing in mind that the prisoner No. 1 (Kulleeansing) fraudulently appropriated about Rs. 200 as the allowance received by him in the twenty or twenty-five years during which he drew it without any sustainable title:—

That you, prisoner No. 1 (Kulleeansing Purtabsing), be imprisoned for six (6) months, with hard labour, and pay a fine of two hundred (200) rupees, or suffer further imprisonment for one (1) year, also with hard labour.

And that you, prisoner No. 2 (Jethabhaee Oojumram), be imprisoned for three (3) months, with hard labour, and pay a fine of fifty (50) rupees, or suffer further imprisonment, also with hard labour, for a period of three (3) months. (Regulation XVII. of 1828, Section II.)

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause to interfere.

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Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

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RUTNAGHERRY.

[Cases Nos. 8, 10, 11, and 9 of the Calendar of the Rutnagherry Sessions Court for 1856. Committed by the Deputy Magistrate, J. H. TROTT, on the 25th and 26th February 1856. Tried by the Acting Session Judge, H. P. ST. G. TUCKER, on the 1st, 2nd, and 5th May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Fraudulent Appropriation of Property by Breach of Trust.

Prisoner in Cases Nos. 8, 10, 11, *and* 9.—Sukhoo, *alias* Ruma, *alias* Gopee, Wife of Baloo Patel, Bhundaree, aged 38.

Charge in Case No. 8.—Fraudulent appropriation of property by breach of trust; in that she did, on or about the 16th February 1854, (Mitee Magh Wud 3rd, Shuké 1775,) in Kusba Veshwee, Turuf Bankote, Talooka Sooverndroog, in the Rutnagherry Division of the Konkun Zillah, by false pretences and misrepresentations, obtain from Pootlyjee, widow of Toolajee Maina, and from Mooktee, widow of Janoo Maina, and Bhewree oorf Anundee, wife of Manka Dhakneeya, property, in ornaments, money, and clothes, value altogether about Rs. 138-13-0, the property of the said females, and did fraudulently appropriate the same. (Regulation XIV. of 1827, Section XL.)

Charge in Case No. 10.—Fraudulent appropriation of property by breach of trust; in that she did, on or about the 7th December 1855, (Mitee Kartik Wud 13th, Shuké 1777, during the daytime, at Wadache Bunder, Moujé Veshwee, Turuf Bankote, Talooka Sooverndroog, in the Rutnagherry Division of the Konkun Zillah, by false pretences and misrepresentations, obtain from one Maloo bin Sambajee Chowan, cash, ornaments, and clothes, value altogether about Rs. 136-12-0, the property of one Gowree, wife of Rama Danroot, and did fraudulently appropriate the same. (Regulation XIV. of 1827, Section XL.)

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Fraudulent Appropriation of Property by Breach of Trust.

Charge in Case No. 11.—Fraudulent appropriation of property by breach of trust; in that she did, on or about the 15th May 1855, (Mitee Wuishak Wud 14th, Shuké 1777,) at Kusba Veshwee, Turuf Bankote, Talooka Sooverndroog, in the Rutnagherry Division of the Konkun Zillah, by false pretences and misrepresentations, obtain from Pandoo bin Luximon Burja, cash, and gold and silver ornaments, to the value altogether of Rs. 201-4-0, the property of the said Pandoo and his relatives, and fraudulently appropriate the same. (Regulation XIV. of 1827, Section XL.)

Charge in Case No. 9.—Fraudulent appropriation of property by breach of trust; in that she did, on or about the 21st January 1855, (Mitee Magh Shood 5th, Shuké 1776,) at Moujé Baugwandlé, Turuf Bankote, Talooka Sooverndroog, in the Rutnagherry Division of the Konkun Zillah, under false pretences and misrepresentations, receive from Rajaee, wife of Luxumon Chowan, and Sayajee, wife of Gunoo Badhul, property, ornaments, cash, and wearing apparel, value in all about Rs. 154-6-6, the property of the said persons, and fraudulently appropriate the same. (Regulation XIV. of 1827, Section XL.)

The prisoner pleads not guilty to the above charges.

H. P. St. G. Tucker, Acting Session Judge.

Finding by the Sessions Court in Case No. 8.—I see no reason to doubt the evidence of the witnesses for the prosecution, who have given their testimony in a very trustworthy manner. They positively identify the prisoner, and, from the time they were in her company, and the peculiarity of her appearance, it is not probable that they would be mistaken on this point. The prisoner has in no way proved the *alibi* set up by her, and as she cannot give the precise dates of her departure to and return from Bombay, it is impossible that she can do so. She may very probably have been in Bombay in the months of Poush and Magh, as stated by her, and have

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returned in time to have committed the fraud which she is now accused of on Magh Wud 3rd. I entertain no doubt of her guilt, and convict her of the fraudulent appropriation of property by breach of trust, as set forth in the charge against her.

As there are other charges against the prisoner, judgment is deferred till the whole of the cases against her have been disposed of.

It is too late in the day to commence the other cases, in which there are many witnesses; the proceedings are therefore adjourned.

H. P. St. G. Tucker, Acting Session Judge.

Finding by the Sessions Court in Case No. 10.—The evidence of the witnesses for the prosecution has been conducted in a satisfactory manner, and I see no reason to doubt the truth of their statements, which clearly establish the guilt of the prisoner. I therefore convict the prisoner Sukhoo, *alias* Ruma, *alias* Gopee, wife of Baloo bin Gopal Patel, of fraudulent appropriation of property by breach of trust, as set forth in the charge on which she has been arraigned. As there are other charges against the prisoner of a similar character, sentence is deferred till those cases shall be disposed of.

H. P. St. G. Tucker, Acting Session Judge.

Finding by the Sessions Court in Case No. 11.— I see no reason to doubt the evidence of Pandoo Burja and his two female relatives, who have given their testimony in a most trustworthy manner. They are positive in their identification of the prisoner, and, from the time she was with them and the peculiarity of her appearance, it is not probable that they would mistake her. They reported the commission of the crime nearly a year ago, and the description which they then gave of the person who had defrauded them corresponds with the prisoner's appearance. There would seem to be no good grounds for discrediting the Mahalkuree's testimony, who declares that the prisoner made a voluntary confession before him, but without taking this confession into considera-

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tion, I am of opinion that there is ample proof that the prisoner has been guilty of the crime imputed to her.

The prisoner Sukhoo, *alias* Ruma, *alias* Gopee, is convicted of the fraudulent appropriation of property by breach of trust, as set forth in the charge against her.

There being still another charge against this prisoner, sentence is deferred.

Finding and Sentence by the Sessions Court in Case No. 9.—Notwithstanding the discrepancies which are to be found in the present and former depositions of the witnesses for the prosecution (which are sufficiently accounted for by the ignorance of the parties, and the time that has elapsed), and the doubtful nature of the identification of the property made by witness No. 2, I see no reason to doubt the general truth of their statements, which I consider clearly establish the charge against the prisoner. The witnesses are positive in their identification of the prisoner, and, from the time they were in her company, and the peculiarity of her appearance, it is not probable that they would be mistaken on this point. The description which they gave of her in January 1855 corresponds with her appearance. The prisoner declares that she was delivered of a child in her village about the time she is stated to have cheated the witnesses; and the Foujdar of the village, before the Deputy Magistrate, corroborated this statement. She has not, for reasons best known to herself, called this witness now, but he was examined in Case No. 8, and could not speak positively to the date of the prisoner's confinement, but only said it occurred in the month of Poush or Magh. The prisoner, being a very strong person, could probably perform long journeys up to a very short period before her delivery. Under these circumstances, I entertain no doubt of her guilt, and convict her of fraudulent appropriation of property by breach of trust, as set forth in the charge against her.

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The prisoner has been convicted in four instances of defrauding persons of property aggregating in value Rs. 623-15-6, and the character of the frauds committed, and her conduct throughout the trial, establish that she is an old and very hardened offender. The offences which have been brought home to her demand exemplary punishment.

The prisoner Sukhoo, *alias* Ruma, *alias* Gopee, wife of Baloo bin Gopal Patel, is sentenced to be imprisoned and kept to hard labour for the period of seven (7) years from this date (Regulation XIV. Section XL. of 1827); and further, under Act. XVI. of 1850, to pay a fine of Rs. 479-11-6; the said fine to be levied by the distress and sale of her goods, and the sum recovered by this means to be divided among the complainants proportionably to the loss which they have suffered.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

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RUTNAGHERRY.

[Case No. 69 of the Calendar of the Rutnagherry Sessions Court for 1855. Committed by the First Assistant Magistrate, G. SCOTT, on the 12th October 1855. Tried by the Senior Assistant Session Judge, H. P. ST. G. TUCKER, on the 19th October 1855. Reviewed by the Session Judge, C. M. HARRISON, on the 15th November 1855. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner, Cheda wulud Baba Kurbé.]

Robbery by Night, with Force.

Prisoners.—No. 1, Cheda wulud Baba Kurbé, Mahomedan, aged 45.

2, Kazee Ahmed wulud Kazee Allee, Mahomedan, aged 30.

Charge.—Robbery by night, with force; in that they did, on the night of 1st October 1855, (Mitee Bhadrupud Wud 6th, Shuké 1777,) in the town of Rajapoor, Talooka Viziadroog, Rutnagherry Division, Zillah Kon-

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Robbery by Night, with Force.
H. P. St. G. Tucker, Senior Assistant Session Judge.

kun, remove a lock from the store of Chapsee Moorlidhurshett, enter therein, and steal therefrom salt, of the estimated value of twelve annas and four pies. (Regulation XIV. Section XXXVII. Clause 3rd, of 1827.)

Prisoners severally plead not guilty.

Finding and Sentence by the Senior Assistant Session Judge.—The evidence against the prisoner No. 1 (Cheda), coupled with his own admissions, most conclusively establishes an attempt to commit robbery on his part. As the salt was never removed from the owner's possession, I hold that the act of robbery was not complete. I convict the prisoner of an attempt to commit robbery by night, with force; in that he did, on the night of 1st October 1855, (Mitee Bhadrupud Wud 6th, Shuké 1777,) in the town of Rajapoor, Talooka Viziadroog, Rutnagherry Division, Zillah Konkun, in company with some person unknown, remove a lock from the store of Chapsee Moorlidhurshett, enter therein, and attempt to steal therefrom salt of the estimated value of twelve annas and four pies.

There is no satisfactory proof of the complicity of the prisoner No. 2 (Ahmed) in this crime, as the statements of the prisoner Cheda, or of the witness No. 5 (Allee wulud Essoop), in respect to this prisoner, are not to be relied on; and I am of opinion that there is as much reason for believing that the witness Allee was himself the companion of Cheda, as there is for suspecting the prisoner Ahmed. The prisoner Cheda is an old and experienced thief. It is shown that he was at enmity with Ahmed, and when he found himself caught he probably purposely called out Ahmed's name, with the view of directing the suspicion of the Police to that person. By these means he doubtless hoped to secure the punishment of an enemy, and the escape of his real companion. I acquit the prisoner Kazee Ahmed wulud Kazee Allee, and direct his discharge.

Shaik Mohideen wulud Shaik Oomer, aged 45, caste

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Robbery by Night, with Force.

Mussulman, Jailor of the Rutnagherry Jail, deposes on solemn affirmation:—"I know the prisoner Cheda; he has been twice in Jail. He was sentenced, on 9th November 1840, for a gang robbery, and two robberies with force, to seven years' imprisonment, with hard labour, and to receive fifty stripes. This imprisonment he underwent in the Jail at Rutnagherry; he was then made to give security for his future good conduct. He was subsequently sentenced to three months' imprisonment, with hard labour, for an attempt to commit robbery. This was in 1850. His conduct was not good in the Jail."

The prisoner puts no questions, and the witness withdraws.

The prisoner, Cheda, is evidently a hardened thief, and the severe punishment he has already undergone has had little or no effect on him. Had I been aware at the commencement of the trial of the extent to which he had been previously punished, I should have laid over the case for the Sessions, as I am of opinion that so incorrigible an offender should properly have been transported.

I now pass the most severe sentence that the law empowers me to inflict.

The prisoner, Cheda wulud Baba Kurbé, is sentenced, subject to the confirmation of the Session Judge, to be imprisoned in a Criminal Jail, and kept to hard labour, for the period of seven (7) years from this date. He is further to receive fifty (50) lashes with a cat-o'-nine-tails, on his bare back, twenty-five (25) on the confirmation of this sentence, and twenty-five (25) two months later. (Regulation XIV. Section XXXVII. Clause 3rd, and Section I. Clause 2nd, of 1827.)

C. M. Harrison, Session Judge.

Reviewed by the Session Judge.—I confirm the conviction, and, being of opinion that a shorter period of ordinary imprisonment, with hard labour, combined with solitary confinement, will better tend to reform so hardened an offender, I sentence him to five years'

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RUTNAGHERRY.

Robbery by Night, with Force.

W. E. Frere, Puisne Judge.

imprisonment, of which eleven months of each year are to be with hard labour, and one month solitary, and to be flogged as determined by the Senior Assistant Session Judge.

In the Sudder Foujdaree Adawlut.—The Acting Session Judge might be requested to caution his Assistant at the detached Station, lest he should not be on his guard against taking up cases such as this and Case No. 6, in both which men who ought to have been sent out of the country have been sentenced to long periods of imprisonment, making them, I am afraid, unprofitable burdens on the State for that time.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

1856
July 2.

SHOLAPORE.

Refusing to give Security.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Petition of Amursing wulud Chutursing, to the Sudder Foujdaree Adawlut. Referred for Report to the Magistrate of Sholapore, W. A. GOLDFINCH, on the 11th June 1856.]

Petition of Amursing wulud Chutursing to the Sudder Foujdaree Adawlut.—[Praying that the sentence passed against him might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition from Amursing wulud Chutursing, a prisoner in the Sholapore Jail, which accompanied the Register of Petitions handed up by the Sudder Ameen in charge of Sholapore, on the 28th ultimo, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

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SHOLAPORE.

Refusing to giv
Security.

Letter from the Deputy Commissioner to the Magistrate.—It may be in your recollection that, in the year 1847-48, I was instrumental in apprehending and bringing to conviction a gang of Dhureekuree horsemen, who had committed many depredations on the roads in the Poona, Sholapore, Dharwar, and Belgaum Collectorates, and also in the Nizam's country, for many years without discovery. The affair on which they were convicted was the robbery of some dancing women in, I think, the Mohole Talooka, on their way from Poona to Sholapore.

Most of the stolen property was recovered at and near Sholapore, and in the Raechore Doab, and the persons concerned in the robbery were traced and apprehended in various parts of the country.

The members of the gang were sentenced to six years' imprisonment, with hard labour, by the Session Judge of Sholapore. I have not the Sholapore records with me, and cannot state the date of trial, nor all their names, but the principal person was one Govindsing, and the remainder of the gang were his immediate relatives and connections.

I have known this gang to be habitual and professional robbers from the year 1828-29, when Govindsing's father, Paharsing, was apprehended by the regular Police of the then South-Western Districts of His Highness the Nizam's territory, in the Alund Talooka, with a number of the gang, and when a large amount of stolen property was recovered.

Paharsing died in prison at Hyderabad. Some of the gang, confined in the fort of Beeder, attacked their guards and escaped, and Govindsing, their late leader, with several others, left the Alund district, and settled for a time in the Almela, Indee, or Hyperga Talookas.

I believe that on several occasions afterwards they were severally or collectively apprehended, and proceeded against by the Magistrates of Sholapore, but always

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SHOLAPORE.

Refusing to give Security.

escaped on giving nominal security, or were punished by slight imprisonment. On these points, I have, however, no accurate information, and reference to your records will perhaps show whether what I have understood is correct, and to what extent.

My object in addressing you on the subject is, that if the prisoners are to be released at the expiration of their present term of punishment, the strongest precautions should, I consider, be taken by Government to prevent their resuming their old courses, which they will inevitably do, if not effectually hindered. It is not for me to suggest the means necessary to this end, but of its necessity I make no doubt; nor could a return to their systematic proceedings be otherwise than attended with great alarm and loss to the inhabitants of the Sholapore Zillah, and the country in general. They would receive ample protection from Zemindars in their old haunts in His Highness the Nizam's territory, and it would be most difficult to follow them up; while the boldness and rapidity of their movements would, as before, render traces very obscure, if not altogether impossible.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In reply to this Precept, the Magistrate has the honour to report that Amursing, the petitioner, is one of the six notorious mounted highway robbers who were convicted before the Sessions Court, in 1849, of "gang robbery by day, with force," and sentenced to six years' imprisonment. On the expiration of this sentence they were called upon, under the circumstances represented by the Deputy Commissioner, Captain Taylor, in his letter No. 321 of 1854, copy of which is annexed, to furnish security for good conduct in Rs. 500 each, for five years, failing to do so to remain in Jail for that period.

The Magistrate is of opinion that it would not be compatible with the security of this part of the country

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SHOLAPORE.

Refusing to give Security.

to let loose these irreclaimable desperadoes without the most satisfactory security; and, as the period for which they can be confined on the Magistrate's authority has nearly expired, confirmation of the Court is requested to the decision by which, in default of satisfactory security, their confinement can be prolonged until the expiration of the period for which the petitioner was required to provide security.

The petition which accompanied this Precept is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected, and the Magistrate is to be informed that when the limit of his authority has nearly expired, he should apply to the Court for authority to detain the petitioner in Jail for a further period, if he should then consider it necessary.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

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AHMEDNUGGUR.

[Case No. 27 of the Calendar of the Ahmednuggur Sessions Court for 1856. Committed by the Third Assistant Magistrate, G. F. SHEPPARD, on the 14th April 1856. Tried by the Acting Assistant Session Judge, the Honorable G. A. HOBART, on the 19th April 1856. Reviewed by the Session Judge, J. W. WOODCOCK, on the 2nd May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Rape.

Prisoner.—Amrita wulud Raghoo, Koonbee, aged 25.

Charge.—Rape (Regulation XIV. of 1827, Section XXIX. Clause 1st); in having, on the 27th day of March 1856, (corresponding with Falgoon Wud 6th, Shuké 1777,) in Moujé Nundoor, Talooka Newaseh, Zillah Ahmednuggur, then and there committed a rape upon the person of Poonjee, wife of Sukaram, aged nine or ten years.

Honorable G. A. Hobart, Acting Assistant Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with rape on the person of a young girl, and pleads guilty.

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AHMEDNUGGUR.

Rape.

The evidence of complainant shows that the offence was committed against her will, and by means of force, and the corroborative evidence of two women, who examined her person the same day, leaves no doubt of the connexion having taken place. The prisoner is therefore convicted of rape; in having, on the 27th day of March 1856, (corresponding with Falgoon Wud 6th, Shuké 1777,) in Moujé Nundoor, Talooka Newaseh, Zillah Ahmednuggur, then and there committed a rape upon the person of the complainant Poonjee, wife of Sukaram, aged nine or ten years.

The prisoner being convicted of the most heinous crime, the Court sentences him (the sentence being subject to the confirmation of the Session Judge) to imprisonment, with hard labour, in the Criminal Jail, for the period of four (4) years. (Regulation XIV. of 1827, Section XXIX. Clause 1st.)

Letter from the Acting Assistant Session Judge to the Session Judge.—I have the honour to submit (as provided for under Regulation XIII. of 1827, Section XIII. Clause 5th and Clause 2nd) my proceedings of this day's date, held in the case of Amrita wulud Raghoo, Case No. 27 of General Calendar for 1856, convicted by me of rape, and sentenced (subject to your confirmation) to imprisonment, with hard labour, in the Criminal Jail, for the period of four years.

The Assistant Magistrate's original proceedings are also forwarded.

J. W. Woodcock,
Session Judge.

Reviewed by the Session Judge.—The prisoner Amrita wulud Raghoo was found guilty, upon his own confession and the evidence of witnesses, of rape, and sentenced to four years' imprisonment, with hard labour, and the Court sees no cause to interfere with the conviction and sentence, which are confirmed accordingly.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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KONKUN.

[Case No. 21 of the Calendar of the Konkun Sessions Court for 1856. Committed by the First Assistant Magistrate, G. SCOTT, on the 26th March 1856. Tried by the Acting Session Judge, H. P. ST. G. TUCKER, on the 30th April 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Robbery by Night, without Force.

Prisoner.—Dhondoo bin Sunkrojee Londha, Mahratta, Hindoo, aged 30.

Charge.—Robbery by night, without force (Regulation XIV. of 1827, Sections XXVI. and XXXVII. Clause 4th); in that he did, on the night of 19th March 1856, (corresponding with Falgoon Shood 13th, Shuké 1777,) at the Kusba Vingorla, Talooka Sindeadroog, Rutnagherry Division of Zillah Konkun, pluck from the garden of Dowlut Sawunt bin Ap Sawunt, an inhabitant of the said village, nine seers of chillies, value one anna and six pies, and two brinjals, value one pie, total property to the value of one anna and seven pies, with intent to deprive the owner thereof.

Prisoner pleads not guilty.

H. P. St. G. Tucker, Acting Session Judge.

Finding and Sentence by the Sessions Court.—I see no reason whatever to doubt the evidence of the witnesses for the prosecution, which clearly establishes that they detected the prisoner in the act of stealing the chillies and brinjals; and as the prisoner had actually plucked the vegetables and placed them in his blanket, I deem the act of robbery to have been complete, and convict him of robbery by night, without force, as set forth in the charge against him; in that he did, on the night of 19th March 1856, (corresponding with Falgoon Shood 13th, Shuké 1777,) at Kusba Vingorla, Talooka Sindeadroog, Rutnagherry Division of Konkun Zillah, pluck from the garden of Dowlut Sawunt bin Ap Sawunt, an inhabitant of the said village, nine seers of chillies, value one

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KONKUN.

Robbery by Night, without Force.

anna and six pies, and two brinjals, value one pie, total property to the value of one anna and seven pies, with intent to deprive the owner thereof.

Shaik Moheedeen wulud Sheik Oomer, Mussulman, is called into Court, and having been duly admonished, makes the solemn affirmation required by Act V. of 1840, and deposes No. 6.*

The prisoner appears to be a hardened offender, on whom short periods of punishment have had no effect. He has already been six times in Jail, and twice been flogged. It would seem from the Assistant Magistrate's

* I am a Mussulman, aged 46, and Jailor of Rutnagherry. I know the prisoner at the bar. He has been six times in the Jail. He was first sentenced on 18th January 1844, by Mr. Loughnan, First Assistant Magistrate, to one month's imprisonment, with hard labour, and twenty-four stripes, for a robbery, without force, within the value of Rs. 10. He was afterwards sentenced, on 21st October of the same year, to three months' imprisonment, for theft, by Dr. Winchester, Assistant Magistrate. On 3rd November 1847, he was convicted of an attempt to commit robbery, and sentenced to six months' imprisonment, with hard labour, by Mr. Loughnan, First Assistant Magistrate; and on 23rd August 1848 he was sentenced by the same Officer to imprisonment for a similar term, on a conviction of robbery, without force, under Rs. 10. On 2nd October 1851 Captain Haselwood sentenced him to six months' imprisonment, with hard labour, for theft, which sentence was confirmed by the Magistrate, who ordered the prisoner, at the expiration of this sentence, to give security for his future good conduct for the period of one year, and as he did not do this he was further confined for another year. On 17th November 1855 he was again convicted of theft, and sentenced by Mr. Scott, First Assistant Magistrate, to three months' imprisonment, partly with hard labour, and partly in solitary confinement, with conjee diet, and fifteen stripes. He has thus been convicted six times of robbery and theft, and has been in Jail altogether at different periods three years and one month, and has received forty-nine stripes. His conduct in Jail was not good, and he has been taught no handicraft.

* * * * * * * * * *

Read and recorded six warrants by which the prisoner has been sentenced to the several terms of imprisonment deposed to in the above deposition (Nos. 7 to 12).

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KONKUN.

Robbery by Night, without Force.

proceedings that when last discharged from Jail, on his representing that it was poverty that drove him to crime, he was provided with a letter to the Executive Engineer in charge of the Phonda Ghaut road, in which that Officer was requested to give him employment as a labourer on the public roads. This letter the prisoner admits he never delivered, and he apparently prefers to live by petty thieving than to earn his subsistence by honest industry. In a case of this kind, the amount stolen is of no importance. The poorer classes of society suffer largely when depredators of the prisoner's description are allowed to remain at large, and the only way to protect them, or to reform him, is to condemn him to an extended term of imprisonment.

The prisoner, Dhondoo bin Sunkrojee Londha, is sentenced to be imprisoned and kept to hard labour for the period of five (5) years from this date, and to receive fifty (50) stripes with a cat-o'-nine-tails on his bare back, twenty-five (25) at the expiration of one month from this date, and twenty-five (25) two months subsequently. (Regulation XIV. Section XXXVII. Clause 4th, of 1827.)

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut—I do not think the sentence passed by the Session Judge in this case judicious. The prisoner has been convicted of petty theft or robberies six times before, and has, in consequence, been in Jail for three years and a month, and received thirty-nine (the Session Judge says forty-nine) stripes, and the Session Judge, therefore, sentences him, for the petty offence of stealing in a garden less than two rupees' worth of vegetables, to five years' imprisonment, with hard labour, and to receive fifty stripes. It is very clear that imprisonment has no terrors for the convict in this case, nor corporal punishment either, and yet the Session Judge would have the State maintain a man of thirty years of age (who would

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KONKUN.

Robbery by Night, without Force.

learn no handicraft in Jail, and preferred when out of Jail living by thieving) for five years, in a place probably not even irksome to him. It would have been better that the Session Judge should have tried what effect a long sentence of solitary confinement and flogging would have had on such a character. The sentence he has passed cannot be upheld ; the man must not be a burden on the State for five years, without some further effort being made to reform him ; *and as I find that altering a sentence from a long period of hard labour to a shorter of solitary confinement is held to be a mitigation and not commutation of sentence (No.* 3, *Rutnagherry,* 1846, 22*nd February* 1847, *and No.* 3, *Surat,* 1849, 19*th March* 1849), I would, therefore, confirm the sentence passed by the Acting Session Judge, to the extent of three months' imprisonment, with hard labour, and flogging, and mitigate the remainder of the sentence to three months' solitary confinement.

In this case, decided since Case No. 85, on which I have remarked, I see the Session Judge has adopted the course of proving a statement before recording it, and so avoided having an unproved exhibit on his record. I hope he intends to follow this plan in future.

Resolution of the Court.—[Adopted from Mr. Frere's Minute, the part of the 1st paragraph printed in *italics* being omitted.]

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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POONA.

[Petition of Junardhun Ramchunder to the Sudder Foujdaree Adawlut. Referred for Report to the Magistrate of Poona, D. DAVIDSON, on the 15th May 1856.]

Assistant Magistrate's Order annulled.

Petition of Junardhun Ramchunder to the Sudder Foujdaree Adawlut.—[Representing that the Magistrate of Poona has returned to him, without an order thereon, his appeal petition against a decision of the Assistant Magistrate, awarding a share in the dwelling-house occupied by petitioner's family, and praying for redress.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to certify the papers and proceedings, together with your report, upon the matter set forth in the accompanying petition, presented to this Court by Junardhun Ramchunder, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate has the honour to state that, on receipt of the above, he sent for the papers, and is only this day in a position to report.

Petitioner states that he and his family have had possession of a certain 'wara' in Chinchore village for one hundred years. It appears true that he has actual present 'wuhiwat' and possession.

A share in this wara was, in 1845, sold by the Civil Court, and purchased by Moro Oodhow, now deceased, whose brother, Naro Oodhow, in September 1855, petitioned Mr. Jones, late Magistrate, that petitioner and others prevented him from knocking down his share of

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POONA.

Assistant Magistrate's Order annulled.

the wara, which his brother Moro had purchased as above. On the 5th October Mr. Jones instructed the Mamlutdar that there was no objection to Naro, as proprietor, knocking down his property if he wished, and that petitioner, &c. might, in the Civil Court, sue him for damages.

On 18th October Gobajee Mahadeo Gupchoop, another of the interested parties, petitioned the late Magistrate against the above order, and that Naro might be prevented from knocking down the house. The present Magistrate had by this time assumed charge of the Zillah, and on going over the papers it nowhere appeared that the Civil Court had put Moro or Naro into possession of the wara or share of the same which the former had purchased. The Magistrate, therefore, directed Naro that he must be regularly put in possession of his brother's purchase, by the Civil Court, before he would be allowed by this department to interfere with a building in the occupation of other parties.

In December, therefore, Naro petitioned the Judge, who referred his petition to this department.

In April 1856 Naro Azam petitioned the Second Assistant Magistrate, who, by mistake, overlooking the preceding order on 15th and 30th idem, directed that the Mamlutdar should not permit Naro to be interfered with by petitioner, &c. in his proceedings to knock the wara down. These orders have led to the petition now reported on.

It is true the Magistrate returned a petition on 10th ultimo to petitioner, as stated in his petition, because orders have been issued on another petition which he had made only a few days before, and therefore a second petition was unnecessary.

The papers in the case, with a list, are forwarded.

Resolution of the Sudder Foujdaree Adawlut.—The petitioner complains of an order of the Assistant Magis-

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trate of Poona, forbidding him to interfere with a party desirous of pulling down part of a wara in which he has an interest. The Magistrate reports that his Assistant's order is, in his opinion, wrong, and the Court conclude that he has annulled or will annul it.* It is not necessary therefore, in the present stage, for the Court to interfere. The petitioner is to be referred to the Magistrate.

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POONA.

Assistant Magistrate's Order annulled.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

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POONA.

[Case No. 19 of the Criminal Return of the Magistrate of Poona for April 1856. Tried by the Deputy Magistrate, NANA MOROJEE, on the 19th April 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Appropriation of another's Property by Breach of Trust.

Prisoner.—Pandoo Esajee, Koonbee, aged 18.

Charge.—Appropriation of another's property by breach of trust (Act XIV. 1827, Section XL.); in that, under date 13th April 1856, (Chuitru Shood 9th, Shuké 1778,) in the city of Poona, he, and one Gunoo Hunmunta, conjointly obtained from the shop of the complainant, Gunoosett Kooshabasett, three 'sarees,' &c., and a piece of cloth in which they had been wrapped up, all worth Rs. 49-14-0; and under a promise made by them both of returning them, or paying for them immediately, Gunoo took them away, whilst he remained in the shop as surety. Instead of fulfilling the promise, however, Gunoo disappeared altogether, and he denied having any concern in the transaction.

The prisoner pleads not guilty.

Nana Morojee, Deputy Magistrate.

Finding and Sentence by the Deputy Magistrate.—It is in evidence that the prisoner Pandoo, and a friend of his, Gunoo, called at the complainant's shop on the

* The Magistrate subsequently reported that he had annulled the order.

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POONA.

Appropriation of another's Property by Breach of Trust.

morning of the 13th April, asked to see some sarees, and selected three of them, worth Rs. 49. It was then settled, between Pandoo and Gunoo on one side, and the complainant on the other, that Gunoo should take them away for a short time to have them inspected and appraised by some friends, while Pandoo should remain at the shop as surety until the cloths were returned or paid for. Gunoo took away the cloths and absconded, for neither his friends nor the Police can obtain any clue to his movements. Pandoo must, therefore, either pay for the cloths, produce Gunoo, or subject himself to punishment for fraudulent appropriation of the complainant's goods. He is not able, so he states, to pay or to point out Gunoo. There is, therefore, no alternative, but to record a conviction against him of the offence set forth in the indictment, and he is sentenced to pay a fine of sixty (60) rupees, commutable to imprisonment, without labour, for three (3) months. Rs. 49-14-0 to be paid to complainant, provided the amount be realized from the prisoner. (Regulation XIV. 1827, Section XL.)

Petition of the Prisoner to the Sudder Foujdaree Adawlut.—[Asserting his innocence, and praying to be released.]

Return of the Magistrate to a Precept of the Sudder Foujdaree Adawlut.—The Magistrate begs to report that the petitioner Pandoo was found guilty, as per accompanying English proceedings.

His brother made a petition to the Magistrate to revise the finding, on the ground that Pandoo was not a bad character, and the accomplice had subsequently been captured by the efforts of the brother, on Pandoo's behalf.

This last appeared to be true, and there was nothing on record against Pandoo's character but the above finding, wherein he is proved an accomplice. In

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reviewing, therefore, on the 12th ultimo, the Magistrate allowed the Deputy's sentence to stand. The whole of the papers are forwarded.

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POONA.

Appropriation, &c.

In the Sudder Foujdaree Adawlut; Minute by Mr. W. E. Frere.—I can see no grounds for believing that petitioner was an accomplice in this case. He appears to have been as much a victim as Gunoosett himself. It is very right that, having become security for his friend Gunoo, he should make good that for which he was security, the piece goods, or their value, and should indemnify Gunoosett for his loss of time; but as that cannot be awarded except by a civil suit, the Deputy Magistrate's decision must be reversed, and Gunoosett be left to his remedy, the Civil Court.

W. E. Frere, Puisne Judge.

Minute by Mr. W. H. Harrison.—Pandoo might have been imposed upon himself; and as his character is said to be good, he should have had the benefit of the doubt, which I should now give him, by acquitting him, and directing his discharge.

W. H. Harrison, Puisne Judge.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is acquitted, and to be discharged.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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KHANDEISH.

[Case No. 11 of the Calendar of the Khandeish Sessions Court for March 1856. Tried by the Session Judge, A. ST. JOHN RICHARDSON, on the 14th March 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Prisoner.—Rambhut bin Murarbhut, Brahmin, aged 17.

Robbery by Night, with Force.

Charge.—Robbery by night, with force, amounting to Rs. 204-15-6.

Finding and Sentence by the Sessions Court.—The Court has considered the evidence for the prosecution,

A. St. John Richardson, Session Judge.

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KHANDEISH.

Robbery by Night, with Force.

the confession of the prisoner, and the fact of the articles produced before the Court, and finds from them that the prisoner Rambhut bin Murarbhut is convicted of robbery by night, with force; in having, on the night of Monday, the 3rd March 1856, (corresponding to Magh Wud 11th, Shuké 1777,) at the town of Nowapoora, District Pimpulnair, Zillah Khandeish, stolen from the house of one Dayal wulud Sewuk (his employer), ornaments of gold and silver, and copper coins, to the value of Rs. 204-15-6, which had been deposited in the wall of the said dwelling-house, and proceeds to pass the following sentence with regard to the relative positions of prisoner and complainant:—

That you, Rambhut bin Murarbhut, having been this day convicted, on your own evidence and confession, of robbery by night, with force, do undergo one (1) year's imprisonment, with hard labour, whereof the sixth month shall be solitary confinement, and to receive twenty-five (25) strokes on the bare back with the cat-o'-nine-tails, at the expiration of the first month, agreeably to the provisions of Regulation XIV. Section XXXVII. Clauses 1st and 3rd, of 1827, regard being had to the explanation in Section VII. of the same Regulation, and Section II. of Act No. XI. 1840.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the final orders of the Judges of the Sudder Foujdaree Adawlut, an opinion* recorded by M. M. Mackenzie, Esq., the Civil Surgeon of Dhoolia, dated 14th

* *Letter from the Civil Surgeon to the Session Judge.*—In reply to yours, No. 504 of 1856, of yesterday's date, I have the honour to report that the reason why the convict, Rambhut bin Murarbhut, is unable (unless with danger to life) to undergo corporal punishment, is that he is afflicted with asthma to such an extent as to prevent easy respiration, though in an otherwise healthy condition, the consequence of punishment being that an increased action would be thrown on the lungs, which they are unable to bear.

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June 1856, as to the inability of one Rambhut bin Murarbhut to undergo sentence passed on him in the Sessions Court of Khandeish on 14th March 1856. Copy of the Court's finding is herewith annexed.

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KHANDEISH.

Robbery by Night, with Force.

The prisoner's petition, dated 17th March 1856, forwarded with the usual register of petitions, was rejected by the Court on 2nd April 1856. (Vide Precept No. 335.)

Resolution of the Sudder Foujdaree Adawlut.—The Court resolve to issue a warrant, commuting the sentence of flogging into a month's solitary confinement, to be undergone at the expiration of the sentence of imprisonment to which the prisoner was sentenced by the Session Judge.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

1856 July 2.

RUTNAGHERRY.

[Case No. 6 of the Calendar of the Rutnagherry Sessions Court for January 1856. Committed by the Officiating Magistrate, W. J. TURQUAND, on the 9th January 1856. Tried by the Senior Assistant Session Judge, H. P. ST. G. TUCKER, on the 30th January 1856, and reviewed by the Session Judge, C. M. HARRISON, on the 6th March. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner Goona bin Ramjee Tambia.]

Gang Robbery, by Night, with force; Instigating and Aiding in the Offence; and Criminal Receipt of Stolen Property.

Prisoners.—No. 1, Sadhoo bin Luxumon Chalka, Koonbee, aged 35, and ten others.

Charge.—Against prisoners Nos. 1 to 8, gang robbery by night, with force. (Regulation XIV. Section XXXVII. Clause 1st, of 1827.)

Against prisoners Nos. 9 and 10, instigating and aiding in the above offence. (Regulation XIV. Section I. Clause 5th, of 1827.)

Against prisoner No. 11, criminal receipt of stolen property. (Regulation XIV. Section XLI. Clause 1st, of 1827).

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Gang Robbery, by Night, with force; Instigating and Aiding in the Offence; and Criminal Receipt of Stolen Property.

H. P. St. G. Tucker, Senior Assistant Session Judge.

The prisoners plead guilty.

Finding and Sentence by the Sessions Court.—The prisoners Nos. 1 to 8 are charged with a gang robbery by night, with force, to the value of Rs. 866-1-11, at the house of Bhikajee Anunt Nimbkur, at Moujé Dhopawe, Talooka Unjunwell; the prisoners Nos. 9 and 10 with instigating to and aiding in the commission of the above offence; and the prisoner No. 11 with the criminal receipt of six rupees' worth of the property stolen.

That a gang robbery was committed at the house of the complainant on the night of 4th December 1855 is clearly established by the evidence of the witnesses No. 4 (Bhikajee Anunt Nimbkur), No. 5 (Ramchundra Bhikajee), and No. 9 (Rama Bhoowud), and the Police who visited the spot on the day following. The prisoners No. 1 (Sadhoo Chalka), No. 2 (Mahadoo Sinda), No. 3 (Goona Koonbee), No. 5 (Suka Pardula), No. 6 (Guna Telee), and No. 7 (Dowluta Tambia) have pleaded guilty, and before the Court have fully confessed their participation in the crime. They are, therefore, convicted of gang robbery by night, with force, as set forth in the charge against them.

The prisoner No. 4 (Vitoo Kansha) has pleaded not guilty; but in his statements to the Police, which he has affirmed in this Court, he admits that he was cognisant of the intention of prisoners No. 1 (Sadhoo Chalka) and No. 2 (Mahadoo Sinda) to commit the robbery, and went with them to the house of Gunputrao (prisoner No. 9), where he was invited to join the gang, but refused; that he gave no information of this to the Police, and two or three days subsequently received from the prisoner No. 2, Rs. 2, one with a clasp to it (a description of ornament stolen from the complainant's house), and caused the same to be melted down by a Sonar named Keshowsett, who has not been examined, inasmuch as he has been committed for trial in another

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case as a receiver of stolen goods. Under the supposition that these statements be true, he must at the time of the alleged receipt have been cognisant that the robbery had been committed, and he is, therefore, by his own showing, a concealer of gang robbery, both before and after the fact, and a receiver of stolen goods. The prisoners Nos. 1, 2, 3, 5, 6, and 7, who have fully confessed their own guilt, unite in stating that this prisoner accompanied the gang, and was present at the robbery. These statements were taken at different times and places, and when there was no possibility of previous communication having taken place between the utterers, and there is no motive assigned or apparent why these persons should have accused prisoner No. 4 falsely. The general criminality of this prisoner being admitted by himself, I consider the statements of the other prisoners, taken, and corroborated as above stated, to be entitled to more credence in regard to the extent of that criminality than the statement of the prisoner himself. I therefore convict him of gang robbery by night, with force, as set forth in the charge against him.

The prisoner No. 8 (Govind Kurunjkur) pleaded guilty to the Officiating Magistrate, but has retracted his plea in this Court. He, however, admits that he made his previous confessions, and that certain portions of the stolen property were found in his house. He now states that they were left there by prisoner No. 3 (Goona Tambia), who instigated him to conceal himself from the Police, and to make a false confession when apprehended. This story is altogether incredible. The discovery of some of the stolen property in this prisoner's house; the statement of his mother (witness No. 12) that he was summoned by prisoner No. 1 (Sadhoo) previous to the robbery, and that he was absent from home at the time of its perpetration; his concealment of himself from the Police, as established by witnesses Nos. 13, 14, and 15;

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and the full and voluntary confession made by him when apprehended, leave no doubt that he was actually engaged in the robbery. He is also convicted of gang robbery by night, with force.

Against the prisoner No. 9 (Gunputrao Burwé), the most important fact is his admitted delivery to the Police, four days subsequent to the robbery, of three hundred and sixty rupees' worth of the stolen property, and his inability to give any satisfactory account of the manner in which he became possessed of this property, or acquainted with its place of concealment. He at first stated that, having been told by the Police that suspicion attached to his village, and having been directed to make search and inquiry, he made examination in the neighbourhood, and observing a bush, the foliage of which appeared to have been recently disturbed, he looked into it closely, and discovered the bag and bundle of stolen articles, which he at once surrendered to the Police Kamgar. He afterwards said, and to this last story he has adhered at the trial, that the prisoner No. 1 (Sadhoo) confessed to him after his (Sadhoo's) arrest, that he had committed the robbery, and told him where the property was concealed, and that then he (Gunputrao) went and found it, and took it to the Police Kamgar. Now had this story been true, and the prisoner Gunputrao been innocent of any knowledge of his servant's participation in the robbery till after the arrival of the Police, he would at once, on receiving the confession of Sadhoo, have informed the Police Kamgar of its purport, and have taken that Officer to look for the property in the place where it was described to be. This was the plain and obvious course which every honest man, possessed of ordinary intelligence, would have pursued; and the prisoner, who is evidently not deficient in intelligence, can assign no reason for having acted differently. There is a discrepancy in the statements of the Police regarding

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the fact of the prisoner having been directed to make inquiry; but this is admitted by Hoosein Khan (witness No. 7). This witness, and Bal Sawunt (witness No. 8), however, both declare that the prisoner Sadhoo was placed under a guard directly after their arrival, and was not allowed to communicate with the prisoner Gunputrao, or any one else. I see no reason to doubt the statements of the Policemen on this point, though I do not feel satisfied that the whole truth has been disclosed regarding the proceedings at Katkiree, and feel inclined to credit the statement thrown out by the prisoner Sadhoo in the course of his cross-examination of the witnesses, viz. that the prisoner Gunputrao was induced by the Police Kamgar to produce the property, on the understanding that proceedings would not be instituted against him, but only against his servants and subordinates. As the prisoner Gunputrao has pleaded no breach of faith on the part of the Police, he is also entitled to benefit by this hypothesis; and the only positive conclusion that can be drawn from his satisfactory account of his own proceedings on that day is that he knew where the property was, and that he was induced by some means or other to produce it. This knowledge of the place of concealment of the greater part of the stolen goods at once proves him to have been accessory to the robbery.

The prisoner has been named by every one of the robbers who have admitted their guilt, and of whom prisoners No. 1 (Sadhoo) and No. 5 (Suka Pardula) are his tenants and servants, as the person who arranged the robbery, and who shared the booty, reserving a share for himself and another servant, the prisoner No. 11 (Sukaram Kanitkur), and retaining the most valuable portion of the ornaments stolen in his custody. In his house is found a sword with a peculiar shaped handle, and the witnesses No. 4 (Bhikajee Nimbkur) and No. 5 (Ramchundra Bhikajee) declare that a sword of a similar

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description was carried by one of the robbers; and he admits that, about the time the gang are alleged to have assembled, he prepared bread for a number of labourers, who were summoned, but never attended, which he gave to the prisoner Sadhoo. These facts go far to corroborate the statements of the robbers, which, taken at different times and places, and without the opportunity of previous communication, are of themselves entitled to some credence; and the note No. 10, in the admitted handwriting of prisoner No. 9, which was found in the house of prisoner No. 2, and of which no satisfactory explanation has been given, tends to show that the prisoner Gunputrao did hold communication with the prisoner No. 2 prior to the robbery, though he now pretends to have been unacquainted with him.

On a due consideration of these circumstances, and of the position of prisoner No. 9 at Katkiree, no doubt is left on my mind that he instigated as well as aided in this gang robbery. I therefore convict him of instigating to, and aiding in gang robbery by night, with force, as set forth in the charge against him.

There is nothing to implicate the prisoner No. 10 (Sukaram Kanitkur) but the statements of the other prisoners, his admitted connection with the prisoner Burwé, and the inference to be drawn from the discovery of the note No. 10 in the house of prisoner No. 2, which is said to have been addressed to him. The witness No. 12 (Unpoorna) professes to identify him as the Brahmin who came with the prisoner No. 1 (Sadhoo) to inquire for her son, the prisoner No. 8 (Govind Kurunjkur), a few days previous to the robbery; but as this witness at first pointed out to the Police Junardun Nimbkur, a relative of complainant, who does not at all resemble the prisoner No. 10, I can place no reliance on her statement in this respect. I do not consider that there is sufficient evidence for the conviction of this prisoner.

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I therefore acquit him; but as, under the circumstances, great suspicion attaches to him, I direct that he be forwarded to the Magistrate for precautionary measures.

Against the prisoner No. 11 (Gunesh Joshee) it is established and admitted that he received a turban and 'dhotur,' which formed a portion of the stolen property, from the prisoner Mahadoo Sinda in pledge.

The turban is of a kind usually worn by Brahmins and persons of the higher castes; but this description of head-dress is also worn by Murathas and other inferior castes, when persons of those castes can afford to purchase them. As the prisoner Mahadoo had a daughter, a courtesan, the prisoner Gunesh may have considered these things to have been received by her in the course of her professional avocations, and I do not think that it has been proved either that when the prisoner received the things he knew they were stolen, or that the circumstances under which he received them were evidently suspicious. His first denial of the pledge, deposed to by witness No. 17, if that be true, is certainly suspicious; but even this may have been caused by cowardice. I do not feel satisfied of the guilt of this prisoner on the evidence adduced; I therefore acquit and discharge him.

Read and recorded two warrants, dated respectively 8th May 1838 and 23rd October 1846, by which the prisoner No. 2 (Mahadoo Sinda) was sentenced, first to five years' imprisonment, with hard labour, and secondly to two years and eleven months' imprisonment, with hard labour, and one month's solitary confinement, on two convictions of gang robbery by night, with force.

The prisoner admits that he was so sentenced, and that he has undergone these punishments.

Read and recorded a warrant dated 7th September

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1846, by which the prisoner No. 3 (Goona Tambia) was sentenced to four years' imprisonment, with hard labour, and two months' solitary confinement, on a conviction of two gang robberies by night, with force.

The prisoner admits that he was so sentenced, and that he has undergone this punishment.

Read and recorded a warrant, by which the prisoner No. 7 (Dowluta Tambia) was sentenced, under date 28th January 1847, to two years' imprisonment, with hard labour, on a conviction of gang robbery by night, with force.

The prisoner admits that he was so sentenced, and that he has undergone the punishment specified.

The prisoners No. 2 (Mahadoo Sinda), No. 3 (Goona Tambia), No. 7 (Dowluta Tambia), and No. 9 (Gunputrao Burwé) are sentenced each to be imprisoned, and kept to hard labour, for the period of seven (7) years from this date. (Regulation XIV. Section XXXVII. Clause 1st, and Section I. Clause 5th, of 1827.)

The prisoners No. 1 (Sadhoo Chalka), No. 4 (Vitoo Kansha), No. 5 (Suka Pardula), No. 6 (Gunoo Télee), and No. 8 (Govind Kurunjkur) are sentenced each to be imprisoned, and kept to hard labour, for the period of five (5) years from this date. (Regulation XIV. Section XXXVII. Clause 1st, of 1827.)

The whole of the above prisoners are also sentenced to pay jointly and severally a fine of four hundred (400) rupees; the said fine to be levied by distress and sale of the goods and chattels of the prisoners wherever they may be discovered, and the amount realised to be paid to the complainant Bhikajee Anunt Nimbkur. (Act XVI. of 1850.)

These sentences are subject to the confirmation of the Session Judge. (Act XIX. of 1839.)

The property before the Court, which belongs to complainant, to be restored to him. That which belongs to

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the prisoners to be sold, and the proceeds applied in liquidation of the fine.

* * * * * * * *

The prisoner No. 2 (Mahadoo Sinda), an old professional gang robber, who has been twice previously convicted, and has already undergone seven years' imprisonment, might with justice have been sentenced to transportation for life; but taking into consideration the peculiar character of the evidence against the great body of the prisoners, I deem it desirable that the case should be tried at once, and not delayed to the next Criminal Sessions.

It will be observed, that in judging of the extent of the criminality of the prisoners Nos. 4 and 9, I have been influenced by the declarations of the other prisoners who confessed their guilt. It has been ruled frequently by the Court of Sudder Adawlut of Bombay, that the statement of a person under trial should be allowed no weight in determining the guilt or innocence of another person arraigned at the same time. Such declarations are in fact not considered what is technically termed evidence, except against the utterer. The rule is obviously a good one, but, like all rules, it will, I think, admit of some exception; and, like most exclusionary rules of evidence, will, if rigidly and uniformly applied, in many cases cause a failure of justice. The unsupported declaration of a prisoner, exculpatory of himself, and accusatory of another, is manifestly worthy of no credit; but the declarations of prisoners who confess their own guilt, made on their first apprehension, at different times and places, when previous communication was impossible, are surely, when they coincide in the details of what occurred, and of the persons engaged, entitled to some consideration. To most persons acquainted with the frequency of perjury in India, and the ease with which false witnesses can be procured, a coincidence of the nature above described

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would carry stronger conviction than the sworn testimony of a professed eye-witness. In the present case I have convicted no person on such statements alone, as witness the acquittal of the prisoner No. 10 (Sukaram Kanitkur); but where, by other independent facts, I have been satisfied of the general criminality of an individual, I have allowed such statements weight in deciding on the extent of that criminality. I shall be anxious to learn whether, in the opinion of the superior Court, I have erred in doing so.

I should have given unqualified praise to the Police for the alacrity with which they conducted their inquiries regarding this robbery, and the dexterity with which they appear to have discovered and apprehended the great body of the perpetrators, had I been able to divest my mind of an impression which has been conveyed to it by the manner in which the Police have given their evidence, and which I share with the Officiating Magistrate, that they have not told the whole truth in regard to the circumstances which first attracted their suspicions at Katkiree, and to what actually occurred there. The story of the Koonbee, name unknown, whom no effort has been made to trace, is not a very probable one. My suspicion may do the Police injustice, as I am bound to say there is little that is tangible to support it; but while I entertain it, I am unable to recommend them for reward, as I should otherwise have been too glad to do.

With reference to the Officiating Magistrate's remark regarding the woman Sukee, I record that I see no grounds for instituting further proceedings against her.

C. M. Harrison, Session Judge.

Reviewed by the Session Judge.—Prisoner No. 4 (Vitoo) has been convicted upon a confession made by him before the Police, and admitted before the Court. But a confession made before the Court, in which a prisoner is tried, is only sufficient proof for conviction provided

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there is *other* evidence in the case, which, if admitted to be true, would prove the charge, to read over to him, and he then confirm it; and as this prisoner's confession was *not* made before the Court in which he was tried, and there is no other evidence against him to prove the charges, he must be acquitted.

The evidence against prisoner No. 9 (Gunputrao) is also, in my opinion, not conclusive. It tends to throw suspicion upon him, but nothing more; and I consider, therefore, that he must also be acquitted.

Both the prisoners, however, may be properly dealt with according to Section XLI. Regulation XIII. of 1827, and remanded to the Magistrate for precautionary measures.

With reference to prisoner No. 2 (Mahadoo), I am of opinion that it is to be regretted this case was not laid over for trial at the ensuing Sessions. For a man who has been twice sentenced to different periods of imprisonment, for similar offences, seven years' imprisonment is a punishment altogether insufficient, and flogging should at all events have been added.

I do not concur with the Senior Assistant Session Judge in his opinion of the way in which the ruling of the Sudder Court, regarding the statement of a person under trial not being allowed any weight in determining the guilt or innocence of another person arraigned at the same time, is to be interpreted.

The conviction and sentence passed on prisoners Nos. 1, 2, 3, 5, 6, 7, and 8 are confirmed.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is an old offender, and the Court do not think the sentence too heavy, so they reject his petition.

With regard to Mr. Tucker's wish to know whether, in allowing weight to the statement of one prisoner against another, in deciding on the extent of the criminality which attached to one otherwise proved to be crimi-

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nal, the Acting Session Judge is to be informed that the statement not being on affirmation, the person against whom it tells having no means of cross-examination, the deponent being a culprit, and it being impossible to discover what motives actuated him,—enmity, which might lead him to exaggerate the part taken by others; affection, which might lead him to extenuate their conduct; or a recreant spirit, which might lead him with equal untruth to declare himself the greatest hero, or the greatest coward of the party,—there can be no doubt that no reliance whatever can be placed upon such statements, and they ought not to be allowed to influence the Judge's decision in any way at all.

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BELGAUM.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 14 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Deputy Magistrate of Belgaum, RAGHOBA JUNARDHUN, on the 5th February 1856. Tried by the Session Judge, A. W. JONES, on the 23rd February and 3rd March 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Wilful Murder, attended with Robbery.

Prisoner.—Abdoola wulud Baba, Mussulman, aged 25.

Charge.—Wilful murder, attended with robbery (Regulation XIV. A. D. 1827, Section XXVI. Clause 1st, and Section XXXVII. Clause 3rd); in having, on the evening of Monday, the 28th January 1856, (corresponding with Poush Wud 6th, Shuké 1777,) taken to his house in Belgaum, in the Padshapoor Talooka, in the Belgaum Division of the Dharwar Zillah, Peerajee bin Appajee, a boy of about five years old, and there removed from his (the boy's) person ornaments to the value of Rs. 3-4-0, and in having afterwards taken this boy (Peerajee) to a well, and there tied a stone, weighing

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A. W. Jones, Session Judge.

about twelve seers, in his (the boy's) clothes, and in that state thrown him into the well; thereby purposely, and without justifiable or extenuating cause, depriving him (the said Peerajee) of life, by drowning.

Finding and Sentence by the Sessions Court.—The prisoner is charged with wilful murder, attended with robbery, and pleads not guilty.

It appears that on the evening of Monday, the 28th January, a labourer of the town of Belgaum, on his return from work, missed his child, and could find no trace of him at all that evening, except that he had been seen with the prisoner, which he reported to the night patrol, and the Police Jemedar therefore arrested the prisoner that night.

The complainant then deposes that on the Tuesday night he was called to the Chowree, and thence accompanied the Jemedar, the prisoner, and others, to the house of the prisoner, where he saw him take out with his own hands, from a hollow bamboo in the roof, the four small silver ornaments which his (complainant's) child had always been in the habit of wearing. The complainant also then heard the prisoner admit that he had thrown the child's body into a certain well outside the town; and he (the complainant) deposes, accordingly, that next morning he saw his son's body taken out of this very well in the presence of the prisoner, the Jemedar, and others.

An Inquest was held on the body of the child, and this report was proved before the Court, which was to the effect that the Members of it had examined the body of the child taken out of the well before them, and had found that a stone, twelve or thirteen seers in weight, had been tied inside the child's 'dhotee,' and that, therefore, they were of opinion that the child had been purposely thrown into the well.

The ornaments found in the prisoner's house, as described above, were produced in Court, and identified

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by the complainant and witness No. 5 as those worn by the murdered child.

Witness No. 6 proves that he took the child's body out of the well from the place pointed out by the prisoner, whom he heard admit having tied a stone to it, and thrown it into the well.

Then the prisoner admitted before the Court the confession he had made on the 29th and 30th January before the Joint Police Officer, and which he had confirmed before the Deputy Magistrate.

In this he states that he was about to take the boy away with him, but being observed by one Jungoo, he left him, and went to the house of Koosana, with whose wife he conversed, and then returned at about six, carried the boy off to his own house, where, when he was asleep, he took from him all his ornaments but the small gold earrings (which he did not like to try and take off for fear of awaking him); that he then carried him to the well, and, having tied a stone into his clothes, threw him in.

After having fully admitted this statement before the Court, the prisoner, however, when asked what he had further to say, declared he had not murdered the boy, whose father had charged him with the murder through enmity; and he called some witnesses, in whose charge he declared he had left the child on the Monday evening.

His confession, however, is corroborated by the discovery of the boy's ornaments in his house, and his surrender of them, as shown by the complainant; by the evidence of witness No. 7, the Sepoy who saw him, as stated in his confession, with the boy on the Monday evening, and informed the complainant of it that evening; by the witness No. 6, who proves that he dived for and found the body in that part of the well which the prisoner had described; and the witness Akowa, whom

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he called, proves that that part of his confession in which he mentions having gone to her house, and spoken to her on the Monday evening is correct, but that he only remained with her long enough to ask a question.

The other witness he named stated that he had seen the prisoner on the 'chubootra' of his house when he returned home on the Monday evening, but that he had left him there on going out again, which he did almost directly, and that at that time several children (amongst whom was the deceased) were playing in front of his door, and that the child was not given into his charge by the prisoner. These two witnesses, therefore, instead of being any advantage to the defence, have only confirmed the statements of the confession.

Considering, therefore, these circumstances sufficiently show the truth of the confession admitted before the Court, the Session Judge convicts the prisoner of wilful murder attended with robbery, and he is accordingly convicted of wilful murder attended with robbery; in having, on the evening of Monday, the 28th January 1856, (corresponding with Poush Wud 6th, Shuké 1777,) taken to his house in Belgaum, in the Padshapoor Talooka, in the Belgaum Division of the Dharwar Zillah, Peerajee bin Appajee, a boy of about five years old, and there removed from his (the boy's) person ornaments to the value of Rs. 3-4-0, and in having afterwards taken this boy (Peerajee) to a well, and there tied a stone weighing about twelve seers in his (the boy's) clothes, and in that state thrown him into the well; thereby purposely, and without justifiable or extenuating cause, depriving him (the said Peerajee) of life, by drowning.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. Section XXVI. Clause 4th, and Section XXXVII. Clause 3rd, of 1827, the following sentence is passed.

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The you, Abdoola wulud Baba, be taken to the common place of execution in Dharwar, and there be hanged by the neck till you are dead. Subject to the confirmation of the Sudder Foujdaree Adawlut.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the confirmation of the Judges of the Sudder Foujdaree Adawlut, counterpart of the proceedings held in the above case, wherein Abdoola wulud Baba has been convicted of wilful murder, attended with robbery, and sentenced to death.

I have the honour at the same time to say that, observing the prisoner had admitted his confession freely before the Deputy Magistrate, I determined to see if he would admit it in the same way before the Court, as in case he did, it would save much time in disposing of the case; and on its being read to him he said distinctly in Hindustanee "It is true," and, it will be observed, afterwards when he denied the charge he did not say a word about not having made this confession. In consideration of this denial, however, I thought it right to send for the witnesses he named; but it will be seen from their examination that they do not say anything calculated to throw any doubt at all on the prosecution. The prisoner's confession was read to him in Canarese, as he understands that language perfectly; for, in order to ascertain whether he might not have misunderstood it, as it was read, he was asked to repeat in Hindustanee the substance of the evidence of the witnesses he called (their depositions having been taken in Canarese), and this he did quite correctly.

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—The prisoner in this case has been found guilty of the murder of a child, for the sake of the ornaments on its person, of the value of Rs. 3-4-0, and his conviction rests upon his confession of the murder,

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corroborated by evidence recorded to the facts of his having himself given up the ornaments from the place in which he had concealed them in his own house, and of his having pointed out the well into which he had thrown the child, and from which its corpse was taken.

The prisoner's confession is stated to have been made to the Joint Police Officer, and confirmed and added to five days later before the Deputy Magistrate, and to have been admitted in the Sessions Court.

The Court find, however, that when put upon his defence, immediately after this admission of guilt was recorded, the prisoner denied the charge, and called witnesses whose evidence, as he professed, would go to disprove it. The Court, therefore, cannot receive this confession as duly proved in the Sessions Court, and the case must be returned, in order that evidence may be taken in proof of it.

That the prisoner robbed the child while sleeping, and carried him out and threw him into the well without awaking him from natural sleep, is hardly credible, and, as the Deputy Magistrate suggests, a stupifying drug may have been administered. But if the prisoner admitted the murder, it seems strange that he should needlessly have given a false account of its perpetration, and this rendered it still more necessary that the confession should be established clearly, as given before the Joint Police Officer and the Deputy Magistrate.

The Court think this case will show to so careful a Judge as Mr. Jones that to record prisoners' statements on their admission merely, instead of proving them, is an erroneous procedure.

The important fact of the ornaments being found in the prisoner's house should not have been left to be proved by one witness, and he the complainant. On this point, therefore, the Court desire such further evidence

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as may be forthcoming to be taken, and the prisoner is to be allowed to rebut it if he can do so.

Further Proceedings of the Session Judge.—The further evidence taken shows that the absence of the child was reported at the Police Chowkee on the Monday evening; that in the course of the night the Jemedar of Police, on going his rounds, and discovering that nothing had been heard of the child, went to the complainant's house, where he learnt that the prisoner was suspected, and that he therefore ordered him to be arrested, which was done by the witness Tipana, a Shetsundee.

It is then shown by the Jemedar, that in the evening of the next day the prisoner, on being questioned, admitted having taken the boy away, and having taken the ornaments from him, and having hidden them in his house, as well as that he had thrown the child's body into a well; and the Jemedar and witness No. 18 show that the prisoner went, with a number of other persons, amongst whom was the complainant, to his own house, and there gave up these ornaments, which the complainant then and there identified.

It is also shown by the Jemedar and witnesses Nos. 21 and 22 that the prisoner showed a well as that into which the child's body had been thrown by him, and that these two witnesses were on guard over it from the time it was thus pointed out by the prisoner until he came there next morning, accompanied by the Jemedar and Joint Police Officer, &c., in whose presence the body was taken out of the well, as proved by the witness No. 6.

Finally, the prisoner's statement, as recorded No. 7, is proved to have been given by him voluntarily by the evidence of the witnesses Nos. 18 and 19, and considering that the prisoner gave up the ornaments of the child from the place where they were hidden in his own house, and pointed out the well and the place in the

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well where the child's body was found, and that the only difference in his statement before the Deputy Magistrate to that made before the Police is that he had committed the crime through enmity to complainant, instead, as stated in the first instance, for want of money (this cause of enmity not only being alluded to in his last statement before the Session Judge, but admitted in the complainant's evidence), the Session Judge sees no reason to doubt that the prisoner did make the confession voluntarily, or that it is true in all the main points.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—In return to the within Precept, it is hereby certified to the Sudder Foujdaree Adawlut, that the extract from the Court's proceedings, and papers which accompanied it, have been duly received, and the instructions contained in the former have been duly carried out, as will appear from the accompanying extract from the Session Judge's proceedings.

The Session Judge begs respectfully to urge, as the delay in the disposal of the case has been solely owing to his fault, and it has led to the prisoner having been kept under sentence of death for an unusual time, that in case the conviction is upheld the final sentence may be mitigated to transportation for life.

The cause of delay in returning the Precept within the prescribed period is owing to the witnesses, who were summoned after the receipt of the case by bhangy, on the 17th April, not having arrived till the 6th May, on which day the case was taken up; it was then postponed for some more witnesses, and, on their arrival, the trial was resumed and brought to a close on this day.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. W. H. Harrison.—The omissions in the proof in this case have been supplied by the evidence which the Session

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Judge has now taken, and as no reasonable doubt can exist of the prisoner's guilt, the conviction should be confirmed.

I have given the Session Judge's recommendation as to the award of a secondary punishment the consideration that is justly due to it, but, anxious as I feel to give it effect, it seems to me inconsistent with my duty to shrink from confirming a sentence of death in a case of murder so clearly proved, and in which a helpless child is the victim.

R. Keays, Puisne Judge.

Minute by Mr. R. Keays.—This case appears now to be complete. The confession has been proved to have been voluntarily given, and the main facts of it established to be true.

There is nothing in this case itself which would induce me to pass a sentence short of the extreme sentence of the law; but, looking at the great delay which has occurred in its disposal, and the length of time the prisoner has been kept under sentence of death, I am willing to adopt the suggestion of the Session Judge, and commute the sentence to one of transportation for life.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the sentence.

W. E. Frere, Puisne Judge.

Minute by Mr. W. E. Frere.—I do not think that this case ought to have been referred to me. The prisoner Abdoola wulud Baba has been found guilty of a most cold-blooded, deliberate murder, and been sentenced to death by the Session Judge. The conviction has been confirmed by my brother Judges, and Mr. Keays, though he sees nothing in the case itself which would induce him to pass a sentence short of the extreme sentence of the law, is for other reasons inclined to accede to the recommendation lately made by the Session Judge that the sentence should be mitigated. A competent Court, then, are agreed that the extreme sentence is the one due to the crime of which the prisoner has been convicted; the only

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doubt is whether some degree of mercy might not be extended to him; but mercy is the prerogative of the Right Honorable the Governor in Council, and it is to His Lordship that this case should, I think, have been referred. Had my brother Judges differed as to the adequacy of the sentence, it would rightly have been referred to me; but as the question is whether the Session Judge's recommendation to mercy should be acceded to, and one of the Judges is of opinion that some degree of mercy should be shown, though both think the sentence of death a proper sentence, the sentence should, I think, be confirmed, and the case, under the circumstances, laid before Government, for them to exercise their prerogative of mercy (Clause 3rd, Section XXXI. Regulation XIII. A. D. 1827) should they think this a case which calls for it.

Further Minute by Mr. Harrison.—If a recommendation for the exercise of mercy towards the criminal in this case cannot accompany the proceedings, I do not concur in the proposal to lay them before Government.

Final Resolution of the Sudder Foujdaree Adawlut.—The sentence confirmed, and the case to be laid before Government for their decision whether it is one to which the prerogative of mercy should be extended.

* * * * * * *

Resolution by the Government.—The question presented in this case is whether the extreme sentence of the law should be carried into execution with reference to the prisoner Abdoola wulud Baba. The Session Judge has recommended the prisoner to mercy, on the ground that, in consequence of the case having been referred back to the Dharwar Court in order that some technical defects might be remedied, the prisoner was left under sentence of death for three months. Mr. Harrison was of opinion that the sentence should be confirmed and

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carried into execution; Mr. Keays, that the sentence should be confirmed, but commuted to transportation for life, on the grounds suggested by the Session Judge. The Right Honorable the Governor in Council cannot discover any sufficient grounds for commuting the sentence.

The original proceedings are herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—Warrant to be issued, and extract from the Court's proceedings of the 18th ultimo, and this date, sent to the Session Judge, for his information.

1856 July 9.

POONA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 47 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, J. S. INVERARITY, on the 10th June 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 16th and 17th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Acting Session Judge.]

Attempt to Commit Murder.

Prisoner.—Koochookim, Chinaman, aged 40.

Charge.—Attempt to commit murder (Regulation XIV. of 1827, Section XXVI. Clause 1st, and Section I. Clause 2nd); inasmuch as he, on Wednesday, the 28th May 1856, (corresponding with Boodwar, Wuishak Wud 9th, Shuké 1778,) in a field near the village of Parbuttee, Talooka Havailee, Zillah Poona, ran at the complainant Kanoo bin Mayajee with an axe, with the intention of killing him, which act was, however, prevented by his being seized by the bystanders.

Finding and Sentence by the Sessions Court.—The prisoner is charged with attempt to commit murder, and pleads not guilty.

The prisoner was one of a gang of prisoners, twelve

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Attempt to Commit Murder.

C. M. Harrison, Acting Session Judge.

in number, who were out at work procuring stones and cutting wood under the charge of four peons on the morning of the day and date specified in the indictment. Some of these, including the prisoner, were Chinamen, and a quarrel having taken place between one of the gang, Appa Mali, and a Chinaman, Acheen, the prisoner went to the assistance of his countryman. Upon this the Peons interfered, and separated the combatants; but upon one of them, Kanoo, threatening to report the prisoner, he rushed at him with an axe in his hand, and aimed a blow at his neck, which he (Kanoo) avoided, the axe, from the force with which the blow was struck, slipping out of his hand. The prisoner then picked up another axe, and was about to renew the assault, when he was secured by the other Sepoys, and the axe wrenched from him.

The charge is clearly brought home to the prisoner by the evidence of the four Peons and one of the prisoners recorded for the prosecution, Nos. 2, 3, 4, 5, and 6.

The prisoner, in his defence, states that he was seized, bound, and beaten by the Sepoys without cause, and that the present charge is the result of his having threatened to complain of this treatment; and to support this statement he calls three witnesses, two of whom depose to the same effect.

The Court does not, however, consider their evidence worthy of credit; and as there can be no doubt that, had the blow aimed by the prisoner at the Sepoy Kanoo taken effect, it would have proved fatal, he is convicted of attempt to commit murder; in having, on Wednesday, the 28th May 1856, (corresponding to Boodwar, Wuishak Wud 9th, Shuké 1778,) in a field near the village of Parbuttee, Talooka Havailee, Zillah Poona, run at the complainant Kanoo bin Mayajee with an axe, with the intention of killing him, which act was,

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Attempt to Commit Murder.

however, prevented by his being seized by the bystanders.

* * * * * * *

[A true copy of an extract from the Calendar of the Court of the Recorder of Singapore was here read, and, having been proved, was recorded.]

From this it appears that, having been convicted of stabbing, cutting, and wounding with intent to murder, —second count, with intent to do some grievous bodily harm,—and death having been recorded, he was sentenced to be transported to the Settlement of Bombay, for the term of his natural life.

After maturely considering the nature of the offence committed, and the punishment provided for the same by Regulation XIV. of 1827, Section XXVI. Clause 4th, and Section I. Clause 2nd, also Act XVIII. of 1845, Section I., the following sentence is passed :—

That you, Koochookim, suffer six (6) months' solitary imprisonment, and receive thirty-nine (39) stripes with a cat-o'-nine-tails on your bare back. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. W. H. Harrison.—There are no circumstances to corroborate the story of the Peons, who have it all their own way; and, without discrediting their testimony, I think that there seems some exaggeration in the statement. A man evading a blow from an axe about to descend on him could not possibly tell, as the Peon Kanoo bin Mayajee Thitay does, that the blow would have fallen on the lower part of his neck; and, in my opinion, the conviction should be limited to serious assault, and punishment awarded accordingly.

Resolution of the Sudder Foujdaree Adawlut.—The only punishments that can be inflicted under Act XVIII. of 1845 are death, transportation, or corporal punish-

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ment not exceeding thirty-nine stripes; so that, even if the convict Koochookim did attempt to murder Kanoo, the sentence of solitary confinement could not be confirmed.

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POONA.

Attempt to Commit Murder.

The Court do not think that the attempt to murder is proved. They think the prisoner has been guilty only of an assault, and sentence him to receive thirty-nine stripes, twenty on the receipt of the warrant, and nineteen a month after.

Present, { WILLIAM EDWARD FRERE, / WILLIAM HENRY HARRISON, } Puisne Judges.

1856 July 9.

SURAT.

[Case No. 14 of the Calendar of the Surat Sessions Court for 1856. Committed by the Second Assistant Magistrate, W. SANDWITH, on the 13th May 1856. Tried by the Session Judge, H. HEBBERT, on the 4th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Prisoner.—Lalia Prag, Kolee, aged 32.

Murder.

Charge.—Murder; in having, at about half-past 11 P. M., on Sumvut 1912, Chuitru Wud 9th, Mungulwar, (corresponding with Tuesday, the 29th April 1856,) purposely, and without justifiable or extenuating cause, in his house at Moujé Pinjra, Purgunna Soopa, Zillah Surat, burnt Nundi, his wife, on the breast, stomach, shoulders, back, throat, and other parts of her person, with lighted pieces of sugarcane, from which the juice had been extracted, and thus inflicted upon her divers wounds, from the effects of which she shortly afterwards died.

Prisoner pleads not guilty.

H. Hebbert, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with the murder of his wife, by burning her with lighted sugarcane so severely that she shortly afterwards died. There is not a word of evidence against him except his own confession, first made before the Police Amuldar, and since ratified before the Second

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1856 July 9. — SURAT. — Murder.

Assistant Magistrate. In this, however, he has admitted that, being exceedingly enraged against his wife, consequent on some words that had passed between them, he arose at midnight, deliberately lighted some sugarcane from which the juice had been expressed, and burnt her therewith, and afterwards, on her becoming insensible, carried her out under his arm to the spot where her body was found the following day, and there left her to die. This is corroborated by the nature of the wounds found on the body, and the assertion of the witness No. 5 (Kooverio) that he heard deceased's screams during the night, although he was too sleepy and lethargic to give heed to them. The prisoner's only excuse for himself hitherto offered is that he was drunk, and at any rate did not intend to do more than severely punish his wife for her conduct. The Court considers this, however, to be no palliation of his crime. Now, the prisoner repudiates his confession altogether, as extorted ; but that it was so is disproved by the evidence of the attesting witnesses to it, and is inconsistent with the fact of his even admitting his guilt before the Second Assistant Magistrate.

The Court finds the prisoner guilty on his own confession, and he is convicted accordingly of murder ; in having, at about half-past 11 P. M., on Sumvut 1912, Chuitru Wud 9th, Mungulwar, (corresponding with Tuesday, the 29th April 1856,) purposely, and without justifiable or extenuating cause, in his house at Moujé Pinjra, Purgunna Soopa, Zillah Surat, burnt Nundi, his wife, on the breast, stomach, shoulders, back, throat, and other parts of her person, with lighted pieces of sugarcane, from which the juice had been extracted, and thus inflicted upon her divers wounds, from the effects of which she shortly afterwards died.

Looking on the murder as one of the most cruel and deliberate character, the Court passes, subject to the con-

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firmation of the Judges of the Sudder Foujdaree Adawlut, the following sentence :— 1856 July 9. SURAT. Murder.

That you, Lalia Prag, be taken to the usual place of execution in Surat, and there hanged by the neck till you be dead, under the provisions of Regulation XIV. of 1827, Section XXVI. Clause 4th.

Resolution of the Sudder Foujdaree Adawlut.—Though the prisoner Lalia has made a confession before the Police authorities, and is said to have pleaded guilty before the Assistant Magistrate, the Court cannot satisfy themselves that the prisoner is guilty of the charge brought against him. The Session Judge says that there is not a word of evidence against the prisoner except his confession ; and all that there is to corroborate the confession, besides the corpse being found with marks of burns on it, is the witness No. 5 (Kooverio), who states that he heard the deceased Nundi cry out "He is burning me" ; but being very sleepy, he went to sleep again. The prisoner gives two accounts of the way in which he murdered his wife ; one, that after a quarrel, he, being drunk, kindled some sugarcane which had passed through the mill, and placed it on his wife's body, and as she was going to run away he drew her back into the house, and next morning found that she was gone, which might reduce the offence to culpable homicide ; and the other that, being drunk, and angry with his wife for abusing him, he kindled a fire on his hearth, of sugarcane that had been milled, and, making a great fire, he went to his wife's cot, and holding her by the hand he made her stand up, continuing to hold her with one of his hands ; that he touched her at first on the leg with the flame, on which she cried out, but as all people were asleep nobody heard her ; that as she was running away he brought her back and burnt her on the sides, back of the neck, and belly, and while he was thus burning her sparks fell on her body and burnt her on the

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Murder.

breast, shoulders, &c. from which she became insensible, and, falling down, began groaning; that he then took her up and carried her away, and threw her under the banyan tree, where she was found; and to account for the apparent impossibility of her clothes, when she was found, not having marks of fire upon them, he says that, when he burnt her she had her 'gagra' on, which, being tucked up behind, was not burnt; and that, when he carried her out, he put on her other clothes.

The Inquest Report says that the following burns were perceptible on the corpse:—"The right leg is scorched from the thigh to the ankle; the belly is fired about the size of the palm of the hand; the centre of the breast the same, about the size of a rupee; the right breast the same, about four fingers wide; both sides the same, the right side about six fingers wide, the left about five; both shoulders the same, the right about six fingers wide, the left three; the throat the same, on the right side about four fingers wide, and the left about the size of a rupee; between the shoulders the same, about six fingers wide." Now there must have been the remains of the large fire which the prisoner said, in his second account, he kindled (even though he may have swept it away, as he says he did), to have been found somewhere, and the screams which the wretched woman must have raised, if his story of the way in which he burnt her is true, must have raised the inhabitants of the whole village. They could not all have been such heavy sleepers as her nephew Kooverio; and, further, it is incredible that none of her clothes, either upon her or that her husband must have taken off her, should have had marks of fire. The Police appear in this case to have contented themselves with obtaining a confession from the prisoner without procuring corroboration of it, or ascertaining whether the murder could have been committed in either of the ways Lalia said it was.

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1856 July 9. — SURAT. — Murder.

When a prisoner retracts his confession, the Court must have more evidence for conviction than mere proof that the prisoner told the story (an improbable, almost impossible one) which constitutes his confession; and there being nothing proved in this case but that the prisoner made these statements on the 30th April and 1st May of his own free will, the prisoner Lalia is found not guilty of the charge of murder, and is ordered to be discharged.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

1856 July 9. — RUTNAGHERRY.

[Notice issued by the First Assistant Magistrate of Rutnagherry, G. SCOTT, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 26th June 1856.]

Notice by a Magistrate.

A. Gibson, Conservator of Forests.

Report by the Conservator of Forests to the Revenue Commissioner N. D.—The Conservator of Forests begs respectfully to bring to the notice of the Revenue Commissioner Northern Division, a subject regarding which he is of opinion that an order might with advantage be issued, and in fact made a standing order, to be annually enforced in the Northern Konkun and Ghaut Districts after 1st March of each year.

The Revenue Commissioner is aware that in those countries much, if not most, of the water-supply for man and beast depends on 'dohs' or standing pools, where the remains of the river-waters accumulate, leaving the greater part of the beds (where the strata are more permeable) dry.

Animals are often brought from a distance of miles to drink at these standing pools.

Thakoors, Koolees, and others are frequently in the habit of poisoning the water in these pools in order to catch the fish, which, becoming stupid, rise to the surface, and are taken by the hand.

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Notice by a Magistrate.

This poisoning is effected either by plants of a very noxious character, which more or less communicate their qualities to the water (such as Rameta, Seeplee, &c.), or by shrubs comparatively mild in their qualities and innoxious to other animals, though fatal to fish, such as Teemboornee, &c.; but even in this latter case the water ceases to be drinkable, because, owing to a process of nature, well known to observers, the respiration of fish and other small water-animals seems to have an important effect in keeping the water pure, and on the death of these the element unfortunately becomes green and putrid, and it is no longer drinkable by man or beast.

The Conservator has heard that there is now extant, in the records of the Joonere Talooka of the Poona Zillah, an order touching the poisoning of pools, but he is not aware that it has been extended elsewhere.

Letter from the Conservator of Forests to the Revenue Commissioner S. D.—Having yesterday received a printed copy of certain correspondence on the subject of impure water in Jungle Districts, I am reminded that I had for some time intended to address you on a subject connected with the above, and which I had the honour to bring to the notice of the Revenue Commissioner Northern Division in 1850 or 1851.

The Commissioner hereupon issued a Circular, the provisions whereof I have reason to believe are still in force. I allude to the practice which prevails in various parts of the Ghaut and Konkun Districts of poisoning the fish in river-pools in the hot season.

The Natives say, and all modern chemistry confirms the fact, that such water is kept in a sweet and healthy state only so long as it is tenanted by fish and other water-animals, and that on the destruction of these it becomes turbid, green, and putrid.

In many parts of the Ghaut Districts, the only avail-

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RUTNAGHERRY.

Notice by a Magistrate.

able drinking water for cattle in the hot season consists of these river-pools.

The importance of these being kept in a sweet state will thus be apparent.

I am respectfully of opinion that a specific penalty should be made to attach to parties thus vitiating the water.

G. Scott, First Assistant Magistrate.

Notice.—Whereas, in various parts of the Rutnagherry Collectorate, the practice of poisoning the fish in the rivers, pools, tanks, wells, &c. by means of noxious plants, lime, and other hurtful substances, has hitherto prevailed; and whereas it has been established by experience, and confirmed by modern chemistry, that such water is kept in a sweet and healthy state only so long as it is tenanted by fish and other water-animals, and that on the destruction of these it becomes putrid and undrinkable, whereby much injury is caused to such inhabitants and their cattle as are wont to resort to such river, pools, tanks, wells, &c.: Notice is hereby given, that the practice as above set forth is strictly prohibited, and any party or parties who shall hereafter, in the village of Velound, Turuf Hatkhumbé, Talooka Rutnagherry, put any noxious plant, lime, or other such hurtful substance into any river, pool, tank, well, or other reservoir, the water of which is used for drinking purposes either by man or cattle, will be punished according to the provisions of Section XIX. Clause 6th, Regulation XII. of 1827.

Letter from the First Assistant Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour herewith to forward for the approval of the Judges of the Sudder Foujdaree Adawlut a Murathee notice, with its English translation, issued by me under Section XIX. Regulation XII. of 1827.

The accompanying copies of letters will explain my reason for issuing such notice.

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RUTNAGHERRY.

Notice by a Magistrate.

The practice of poisoning the fish prevails extensively in this Collectorate; I therefore purpose, should the accompanying notice be approved, having it printed, and issuing a similar one in every village under my jurisdiction.

Resolution of the Sudder Foujdaree Adawlut.—There seems no present occasion for this proclamation, the season of the year to which it would apply being passed by. The Court think it might well be deferred until the return of the Magistrate to the Zillah, and the Assistant Magistrate in charge is to be informed accordingly, and that the Court have not recorded the Proclamation.

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POONA.

Present, WILLIAM HENRY HARRISON, ROBERT KEAYS, Puisne Judges.

[Case No. 48 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, W. M. COGHLAN, on the 12th June 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 16th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Acting Session Judge.]

Escape from Custody after Sentence.

Prisoner.—Siman, *alias* Sarung, Musulman, aged 54.

Charge.—Escape from custody after sentence (Regulation XIV. of 1827, Section XXIV.); in having, on Thursday, the 10th April 1856, (corresponding with Bresputwar, Chuitru 6th, Shuké 1778,) effected his escape from the fort of Poorundhur, where he was in custody under a warrant of the Recorder of Prince of Wales' Island, whereby he was sentenced to be transported to Bombay for twenty-one years; twelve years, eleven months, and eleven days of his penal servitude remaining unexpired at the time.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with escape from custody after sentence, and pleads guilty.

It appears that the prisoner having been convicted of

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Escape from Custody after Sentence.

cutting and wounding, with intent to do some grievous bodily harm, was, under date 27th May 1848, sentenced by the Recorder of Prince of Wales' Island to be transported to Bombay for twenty-one years, and that under this warrant he was, about four years ago, sent with others to undergo penal servitude in the fort of Poorundhur. From thence, on the day and date specified in the indictment, he effected his escape with two others, who, having been tried before this Court for the offence, were convicted, and, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut, sentenced, under date 29th May last, each to one month's solitary imprisonment. It then appeared, as in this case, that these prisoners and two others (in all five) were under the charge of two Shetsundee Sepoys, and that they were confined at night in a shed, the door of which was left open, both the Sepoys on guard over them being asleep at the time. Under these circumstances of temptation to escape, the Court deemed a month's solitary imprisonment sufficient punishment; and they will be taken into consideration in determining the sentence to be passed in the present case.

The prisoner is convicted on his own confession, confirmed after hearing the evidence in the case (which, if admitted to be true, is sufficient for conviction) read over to him, of escape from custody after sentence; in having, on Thursday, the 10th April 1856, (corresponding with Bresputwar, Chuitru Shood 6th, Shuké 1778,) effected his escape from the fort of Poorundhur, where he was in custody under a warrant of the Recorder of Prince of Wales' Island, whereby he was sentenced to be transported to Bombay for twenty-one years; twelve years, eleven months, and eleven days of his penal servitude remaining unexpired at the time.

And after maturely considering the nature of the offence committed, and the punishment provided for the

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POONA.

Escape from Custody after Sentence.

same by Section XXIV. of Regulation XIV. of 1827, the following sentence is passed :—

That you, Siman, *alias* Sarung, suffer solitary imprisonment, for one (1) month at the expiration of the punishment awarded to you by the Recorder of Prince of Wales' Island. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

* * * * * * *

The misconduct of the Shetsundee Sepoys having been brought to the notice of the Magistrate by an extract from the Court's proceedings in the case of the other two prisoners, it does not again require to be represented.

Resolution of the Sudder Foujdaree Adawlut.—The Court find, in this case, that, as no restraint was broken, the offence of escape from custody cannot be held to have been committed, and they annul the conviction and sentence.

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BELGAUM.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 10 of the Calendar of the Sessions Court for 1856. Committed by the Second Assistant Magistrate, C. SHAW, on the 22nd January 1856. Tried by the Assistant Session Judge, R. H. PINHEY, on the 13th February 1856. Reviewed by the Session Judge, A. W. JONES, on the 14th April 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Robbery with Force, by Day.

Prisoner.—Eerowa, Wife of Goorpada, Hindoo, aged 35.

Charge.—Robbery with force, by day (Regulation XIV. of 1827, Section XXXVI. Clause 3rd); in having, at or about noon, on or about Sunday, the 30th day of December A. D. 1855, (corresponding with 7th Margsheersh Wud, Shuké 1777, Rakshusnam Sumwutsur,) broken open the lock of the door of the house of one Pursa, at Kotulgee, in the Uthnee District of the

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BELGAUM.

Robbery with Force, by Day.

R. H. Pinhey, Assistant Session Judge.

Belgaum Collectorate, in the Dharwar Zillah, and stolen from some 'ghurras' (or earthen pots), in the house of Pursa aforesaid, property, in gold ornaments and coin, valued at Rs. 37-10-0.

Finding and Sentence by the Sessions Court.—The prisoner is charged with robbery with force, by day, and pleads not guilty.

It appears that during prosecutor's absence in his field, some one forced open the door of his house, and, removing the ghurras off each other, abstracted therefrom certain ornaments and monies. On information being given to the Police Patel, and on prosecutor suspecting prisoner, she was apprehended on the evening of the robbery, and denied the crime. The next day, however, she admitted the crime in the presence of prosecutor, the Polic Patel, and a respectable person of the village in which she lives; and before these same people she produced the property she had stolen, all of which, with the exception of the coin, was identified by prosecutor and by his neighbour. After this, prisoner made a written confession of her guilt in the Uthnee Kutcheree, on the 3rd ultimo, and again on the 14th ultimo.

In her defence, prisoner advances nothing but ill-treatment and enmity as the causes of the present case having been got up against her. In support of these allegations, prisoner offers no proof; and the Court, considering the proof recorded for the prosecution ample for the conviction of the prisoner, convicts her accordingly of robbery with force, by day; in having, at or about noon, on or about Sunday, the 30th day of December, A. D. 1855, (corresponding with 7th Margsheersh Wud, Shuké 1777, Rakshusnam Sumwutsur,) broken open the lock of the door of the house of one Pursa, at Kotulgee, in the Uthnee District of the Belgaum Collectorate, in the Dharwar Zillah, and stolen from some ghurras (or earthen pots), in the house of Pursa

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aforesaid, property, in gold ornaments and coin, valued at Rs. 37-10-0.

After considering the nature of the crime, and the four previous convictions recorded above, with the punishment allowed in Clause 3rd, Section XXXVII. Regulation XIV. of 1827, the following sentence is passed :—

That you, Eerowa kom Goorpada, be imprisoned for two (2) years, of which the first, twelfth, eighteenth, and twenty-fourth months are to be passed in solitary confinement, and the rest with hard labour.

Reviewed by the Session Judge.—The Session Judge sees no reason to interfere with the conviction and sentence passed on the prisoner.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

The Court do not feel any doubt of the correctness of the decision in this case. The evidence proves the confession of the prisoner to have been voluntarily made, and her confession is fully corroborated by the established fact of her having produced, from the place where she had concealed it in her own house, the property which is identified by the prosecutor as his or his family's, and by witness No. 2 (Nursawa) as belonging to prosecutor's mother.

The Court, however, think that the case might have been better prepared by the Second Assistant Magistrate, and better tried by the Assistant Session Judge, for the only evidence produced, as the case now stands, is to prove that Pursa, when in his garden, was informed that his house had been broken open ; that he went home and found the lock of the door broken, and some of his property gone ; that he mentioned that he suspected Eerowa ; that she was taken up, denied the charge, but next day produced the stolen property from her own house.

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The evidence of the person who first discovered that the house had been broken into, and of the neighbours Nursapa and Sewapa, who told Powaryapa that they had seen Eerowa go towards Pursa's house, should have been taken, instead of the Police Patel being allowed to mention that he had heard it.

The woman Bheemee should have been examined regarding Eerowa's redeeming a pledge left with her on that day, and that, together with the discovery of the property, would have made the confession useless.

The Court cannot see why, the robbery having been committed on the 30th December, and the evidence was known on the 31st, the case was not sent to the Assistant Magistrate before the 14th January, even though the District Police Officer did not take it up until the 3rd idem; nor why the date of apprehension is said to have been the 3rd January, when the Police Patel had had Eerowa in confinement since the 3rd January. This mistaken practice the Magistrate ought to correct.

It is delay in cases of this kind that gives prisoners the opportunity of declaring that they were ill-treated, and gives so much ground for suspecting that there is truth in their declarations; particularly when the Police Patel, as in this case, says that the confession was not made until he got information from some neighbours, while before the Assistant Magistrate he says he got this information the day of the robbery.

The Session Judges would perhaps save themselves and their establishments trouble if, when handing up petitions from convicts such as this, in which there are deliberate falsehoods,—the petitioner saying that her house was searched and no property found, while all the property was found there, and that the prosecutor tried to debauch her; while before the Assistant Session Judge she says that it was the Police Patel who bore enmity to her because she would not submit herself to him,—

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they were to mention in a report on it that there were these misrepresentations, mis-statements, or contradictions, and the Court might then not think it necessary to call for the proceedings in the case.

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TANNA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 24 of the Calendar of the Tanna Sessions Court for 1856. Committed by the First Assistant Magistrate, R. H. BOSWELL, on the 23rd April 1856. Tried by the Acting Session Judge, H. P. ST. G. TUCKER, on the 16th, 17th, and 18th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Acting Session Judge.]

Murder.

Prisoners.—No. 1, Dumbia bin Kat Thakoor, Agree, aged 30.
2, Halya bin Kat Thakoor, Agree, aged 32.

Charge.—Murder (Regulation XIV. Section XXVI. Clause 1st, of 1827); in that they did, on or about the 14th April 1856, (Mitee Chuitru Shood 10th, Shuké 1778,) at the hamlet of Pandive, Talooka Panwell, Tanna Division, Zillah Konkun, without justifiable or extenuating cause, assault and knock down one Jania bin Hal Gowud, and then stamp violently on his person, from the effects of which ill-treatment the said Jania bin Hal Gowud died very shortly afterwards.

H. P. St. G. Tucker, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners Dumbia and Halya bin Kat Thakoor are charged with the murder of Jania bin Hal Gowud, of Pirkhone. It is established from the evidence of the witnesses No. 5 (Thukee, widow of the deceased), No. 6 (Gopal wulud Hal Gowud), No. 7 (Balloo bin Gunjee Moria), No. 8 (Hashya bin Gowria), No. 9 (Kasee, wife of Dakoo Muggur), No. 10 (Gowria bin Kat Patel), No. 11 (Changia bin Sumbajee), No. 12 (Pateree, widow of

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Narayen), and No. 13 (Jania Thak Gowud) for the prosecution, which I see no reason to doubt, that the deceased, as Patel, laid claim to the disposal of a piece of land on which a tenement had formerly stood, which had been occupied by a relative of the prisoner's, who had left the village; and that on the other hand the prisoners deemed that they possessed a right to occupy the said land. On the 14th of April last, a party of villagers assembled, to assist one Hashya Patel (witness No. 8) and his father (witness No. 10) in the erection of a new house on a piece of ground which was in the neighbourhood of the disputed piece of land and the houses of both the prisoners. At noon the parties dispersed, and the prisoners and several of their companions went to dine at the house of prisoner No. 1 (Dumbia) about three o'clock in the afternoon. The witness No. 7 (Balloo Moria) went back to Hashya's house, and was sitting there with Hashya and his father, when the deceased and his brother Gopalia (witness No. 6) came there, and the deceased, who is stated to have been drinking, went and tied up a bundle of grass, and placed it on the disputed piece of land, in token that he laid claim to it, and that no one was to touch it. In the Peshwas' time, it was the custom, when any person claimed a piece of land, to place a bundle on it, and after this had been done, any one who occupied the land until the matter was settled by the Government Officers was liable to punishment. The custom still obtains among the cultivators, though no penalties are now enforced if this rude method of notifying a claim be not attended to. The prisoners either witnessed this act from their house, or were informed of it, and they ran out, and prisoner No. 1 (Dumbia) seized the deceased (who was sitting on the raised platform of the house that was in course of erection) by the throat, and threw him down with much violence from the platform, which was about a cubit high. He fell backwards

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on his head, and then each of the prisoners, who are strong and powerful men, stamped several times upon his chest and stomach with great violence, until he was quite insensible, and then made after his brother, who had run away, and who escaped from them by the assistance of one of the men who had been the prisoners' guests. The prisoners then lifted up the deceased, in whom life was not quite extinct, and deposited him at the door of witness No. 9, where he almost immediately died. The witnesses Nos. 6, 7, 8, and 10 witnessed the assault, but were too terrified to interfere, and neither they nor the men who had been the guests of the prisoners seemed to have taken any means to restore the deceased. On the following day, when the Inquest was held on the body, the members found the chest much bruised, and black with beating, and the neck to all appearances dislocated. The widow of the deceased states that the bones of the chest and several ribs were broken; and this may have been the case, for the Members of the Inquest do not appear to have handled the body. They were, however, unanimously of opinion that the deceased's death was caused by the injuries he had received at the hands of the prisoners, and of this there can be no reasonable doubt. The prisoners in their defence deny that they assaulted the deceased at all, or the existence of any dispute between him and them in regard to the piece of land referred to. The prisoner No. 1 (Dumbia) admits the dinner at his house, but states that he left immediately afterwards to go to his field, and did not return till after dark; and the prisoner No. 2 (Halya) also says that he was not at the spot in question at the time referred to: but neither of them brings forward any evidence to establish the truth of these assertions, nor do they call for the evidence of any of the persons who are known to have been at their house, and who, from

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their statements to the Police, are evidently favourably disposed towards them. They also say that the deceased, who was a confirmed drunkard, died simply of the effects of constant intoxication ; that the members of the Inquest have given a false account of the state of the corpse ; and that the whole case has been got up against them through the enmity of the Foujdar Patel, the brother of the deceased, and another man named Bal Patel. No sufficient cause is assigned as a motive for the adoption of this course by those persons.

There are several discrepancies in the statements of the witnesses for the prosecution, but this was to be expected among persons in their position in life, after the time that has elapsed.

Moreover, witnesses No. 11 (Changia bin Sumbajee), and No. 13 (Jania bia Thak) are evidently most unwilling witnesses, and have been actuated by a desire to screen the prisoners. They have, however, been obliged to admit facts which corroborate the statements of the eye-witnesses to the assault.

After a mature consideration, I see no reason to mistrust the evidence for the prosecution, and I think it clearly establishes that, with no adequate provocation, the prisoners committed a most savage assault on the deceased, from the effects of which he almost immediately died. Is there, then, anything in the circumstances of the case which will divest this act of the prisoners of the criminality which constitutes murder? I regret to say that I can see none. The provocation was of the slightest kind, and the manner in which the prisoners trampled on the deceased after he had been knocked down shows a malignity of purpose from which it must be inferred that their intention was to kill. It would seem that both the prosecutor and the prisoners had partaken of some liquor on that day, but neither is said to have been drunk ; and the manner in which the

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prisoners disposed of the body would seem to show that they, at any rate, were conscious of the character of the act they had committed, and the consequences likely to ensue.

Under the above circumstances, I convict the prisoners, Dumbia bin Kat Thakoor and Halya bin Kat Thakoor, of murder, as set forth in the charge on which they have been arraigned, and sentence them, subject to the confirmation of the Court of Sudder Foujdaree Adawlut, to be transported for the term of their natural lives. (Regulation XIV. of 1827, Section XXVI. Clause 4th.)

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

The Court notice that Rustomjee Merwanjee, Sub-Assistant Surgeon at Panwell,* certified that, on account of putrefaction, nothing could be discovered as to the cause of death in this case.

It seems that this certificate is dated the 16th April, or two days subsequent to the murder; and that putrefaction would scarcely seem a sufficient reason, at that date, why it should not have been ascertained whether the deceased's ribs were broken, or his neck dislocated. This might have been important to the issue of the inquiry, and the Right Honorable the Governor in Council should be moved to send the case to the Medical Board, in order to their attention being called to the circumstance, and in case they may consider the matter deserving of notice.

* *Certificate by the Sub-Assistant Surgeon.*—I have examined the body of Jaina Hal Gowud at 10 A. M., and it is found in such a state of putrefaction that nothing can be made out.

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POONA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Petition of Gungabaee, Widow of Oomajee, to the Sudder Foujdaree Adawlut. Referred for Report to the Session Judge, and by that Officer to the Magistrate of Poona.]

Disobedience of the Orders of the Sudder Foujdaree Adawlut by a Magistrate.

Petition of Gungabaee, Widow of Oomajee, to the Sudder Foujdaree Adawlut.—[Presented February 1852, and praying that her Inam, Mokassa, &c., which had been sequestrated in consequence of her sons having rebelled against Government, might be restored.]

Resolution of the Sudder Foujdaree Adawlut.—Report to be called for from the Session Judge of Poona under the usual Precept.

Return of the Acting Assistant Session Judge in charge to the Precept of the Sudder Foujdaree Adawlut.—In the absence of the Session Judge on leave, the Acting Assistant Session Judge in charge begs to hand up the original report furnished by the Magistrate of Poona on the matter set forth in the petition of Gungabaee, widow of Oomajee, for the information of the Judges of the Sudder Foujdaree Adawlut.

The original petition is herewith returned.

Report of the Magistrate of Poona to the Session Judge of Poona.—I have the honour to acknowledge the receipt of your letter No. 276, of the 3rd instant, with accompaniments; and with reference to the petition of Gungabaee kom Oomajee, for the restoration of her Inams, &c., to state that Oomajee and his two sons (Tookia and Mahankalia) were noted rebels, and Chiefs of the Bund in the Poorundhur Districts. Tookia and Mahankalia were outlawed under the authority of the Sudder Adawlut, communicated in their Precept No. 498, of 12th May 1845, and as they did not make their appearance within the time then allowed them, the whole of their property was confiscated. Subsequently they committed a number of depredations,

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as will be seen by the Judges of the Sudder Adawlut on referring to the correspondence from this department during the years 1849 and 1850.

Gungabaee's statement, that Tookia has been killed and Mahankalia apprehended, is true; but it must be taken into consideration that instead of surrendering themselves they were surprised by the Police, when they made such resistance that three of the Police were wounded, and Tookia himself could only be secured after being disabled with a bayonet.

The companions and followers of the abovenoted rebels are desperate men, and have been fugitives for years past; and although there have been liberal sums offered as rewards for their capture, they are still at large. On a reference to Mr. Seton Karr, to the Registrar of the Sudder Foujdaree Adawlut's letter No. 1071, dated 29th April 1851, it will be seen that on the 4th of that month they went, armed with guns, swords, and sticks, to the village of Wargaum, on the Bombay road, and murdered one Tookaram wulud Ramjee, Ramoosee, in revenge for having apprehended Hunmunta, one of the outlaws, who had rendered himself more notorious than the rest by having made his escape from the Jail of Poona while under sentence of transportation.

For the above reasons, I would strongly recommend that the request of the petitioner be rejected, because it would be establishing a bad precedent to permit the poverty of the families of such desperate characters to prevent the full execution of the fiat of confiscation under which their property was justly forfeited to the State.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The report of the Magistrate shows no authority for the confiscation of the property of Tookia and Mahankalia. The proclamation was sanctioned by the Sudder Foujdaree Adawlut under Section XXXIX. of Regulation XII. of 1827, and its penalties do not embrace confiscation of property.

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Mahankalia was convicted of *rebellion*, for which confiscation of property is not one of the penalties.

Mahankalia is now dead; and the Court consider that the mother of this unfortunate family, the present petitioner, should not be punished for the crimes of her husband and sons, and the other Ramoosee fugitives.

The Magistrate is to be told that unless he has other authority than what he has furnished to the Court in this report, the property of the deceased outlaws must be released and restored to their heirs.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate begs to state that, on referring to the records of his office, it appears that the late Magistrate, Mr. A. Elphinston, after having obtained permission to publish a proclamation for the apprehension of Tookia and Mahankalia according to Appendix K of Regulation XII. Section XXXIX. of 1827, issued an order to the Mamlutdar to attach the property, as if the proclamation had been made according to Section XXXVIII. Appendix J, and no trace of the latter having been sanctioned by the Judges is forthcoming in this office.

The Magistrate begs to observe, that the delay in replying to the above Precept is owing to particular inquiries and search among his records (English and Murathee) for some authority for the confiscation of the property of the two deceased outlaws.

The following is a list of the land, &c. confiscated, and which will be restored to the heirs of Tookia and Mahankalia, pending the inquiry into their title to the same by the Inam Commissioner.

Statement of the land, &c. confiscated by the Magistrate from the late outlaws, Tookia and Mahankalia, sons of Oomajee, Ramoosee:—

½ Chaoor of Inam land in Buree village, assessed at Rs. 60.

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½ Chaoor of Inam land in Bagowdee village, assessed at Rs. 12.

124 Bigas Inam land in Sapoor, assessed at Rs. 118-14-9.

A portion of the Duleran of Poorundhur Ghéra.

A share (estimated at Rs. 30) of the Mokassa in Sakoodee village.

Further Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—This Precept to be returned to the Magistrate for full execution, by his certifying the restoration of the property with arrears.

Precept No. 188 returned to the Magistrate of Poona with the above endorsement.

Further Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate begs to state he is unable to certify as ordered in the said Precept, and referring the Court to Government Circular No. 2267, dated 23rd instant, in the Territorial Department, Revenue.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. W. H. Harrison.—This is a Return by the Magistrate of Poona to the Court's Precept of the 28th July 1852, requiring him to restore to the petitioner certain property of which he had illegally and without due warrant taken possession.

The order has not been obeyed, and the Magistrate, as reason for non-compliance, quotes a Circular from Government, transmitting copy of a letter containing an opinion given by the Legal Remembrancer, to the effect that it is unreasonable that property—Inam—of persons out in rebellion against Government, and of their relations, should not be confiscated, and advising Government to resist the claim of the petitioner (meaning, I presume, the petitioner before the Court) for the restoration of the property.

I find no good and sufficient reason here for the Court's order being disobeyed.

The Code of Regulations, according to which the Magistrate of Poona is sworn to administer the duties of

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his office, vests the supreme criminal jurisdiction of the territories subject to the Bombay Presidency in the Sudder Foujdaree Adawlut.

The decision of this Court is final in all matters within its cognisance, and its interpretation of the law is binding on all.

In the present case the petitioner complained of the seizure of her property in consequence of her sons having gone out as rebels and plunderers. That the Act complained of was illegal is evident, and the Magistrate, Mr. Jones, admits, on the 19th July 1852, in reporting to the Court, that a mistake had been made by his predecessor, and that he could find no authority on his record for the attachment.

The Court could, therefore, adopt no other course than they did. It was impossible that they could give the sanction of their authority to an act for which no legal justification was at the time set up, and for which none is now attempted.

It may be contended that it is unreasonable that all property of rebels is not liable to confiscation; but that was no question for the Court's consideration, the Judges being bound to administer the law as it stands.

I can scarcely suppose that the Government have had the state of this case correctly placed before them, or believe that they intended to authorise the Magistrate to resist the Court's process; and finding, therefore, that there is no sufficient excuse for the Magistrate's disobedience in this case, I would represent his conduct to Government, and request that he may be ordered at once to obey the Court's Precept, and restore the property to petitioner.

W. E. Frere, Puisne Judge.

Minute by Mr. W. E. Frere.—This is a return, dated the 30th ultimo, by the Magistrate of Poona, to the Court's Precept of the 23rd March 1852, certifying his inability to execute the Court's orders, and referring, apparently as his authority or excuse for not obeying the orders he has received, to a Circular from Government, No. 2267, of

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the 23rd ultimo, a copy of which has been furnished to us by Government, and is now under our consideration.

As none of the present Judges were in the Court when the Precept now returned was issued, it will be well to recapitulate the circumstances of the case before considering what course we ought to adopt to secure obedience to our orders.

On the 24th February 1852, Gungabaee, the widow of Oomajee Naik, presented a petition to the Sudder Foujdaree Adawlut, stating that, after the death of her husband, Oomajee, the Government had conferred upon her a new Inam, which, consisting of Inam, Koorun, and Mokassa, she had enjoyed until, in consequence of her sons Tookia and Mahankalia having engaged in a rebellion, they were confiscated, and her household property disposed of by public auction. That one of her sons, Tookia, was killed, and the other, Mahankalia, died in Jail; and, as she was starving, she prayed to have the property restored to her.

This petition was sent to the Session Judge for his report; and his Assistant, in reply, forwarded a letter from the Magistrate of Poona, in which he strongly recommended that the request of the petitioner should not be complied with, because it would be establishing a bad precedent to allow the poverty of the families of such desperate characters as Oomajee and his two sons were to act as a preventive against the full execution of the fiat of confiscation under which their property was justly forfeited to the State; the Magistrate having, in a former part of his letter, stated that Tookia and Mahankalia were outlawed under the authority of the Sudder Foujdaree Adawlut, communicated in their Precept No. 498, of the 12th May 1845, and, as they did not make their appearance within the time then allowed them, the whole of their property had been confiscated.

Upon the receipt of this answer, the Sudder Foujdaree Adawlut, under date the 23rd March 1852, directed the

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Magistrate, unless he had other authority than that he quoted, to release the property and return it to Tookia and Mahankalia's heirs, as the Precept of the Sudder Foujdaree Adawlut, which the Magistrate had quoted did not sanction confiscation of property, and the Court did not think that Gungabaee should be punished for the crimes of her sons and husband.

On the 19th July following the Magistrate made a return, stating that the late Magistrate, Mr. Elphinston, having obtained sanction, under date the 12th May 1845, to publish a proclamation according to Appendix K of Regulation XII. A. D. 1827, for the apprehension of Tookia and Mahankalia, by which, if they did not give themselves up, they would be banished for life from the Zillah, and, if thereafter found there, be liable to be imprisoned for life, issued a proclamation, in the form of Appendix J, for which no sanction could be found, and by which, in the event of Tookia and his brother not giving themselves up, their property would be attached; that he had searched in vain for some authority for the confiscation of the property; and that the land would be restored to Tookia and Mahankalia's heirs.

On the 28th July this was returned to the Magistrate for full execution, that is, to report that he had made over the property with arrears to the heirs; and now, at the expiration of four years, the Magistrate makes his return that he is unable to do so, and refers to the Government Circular No. 2267, of the 23rd June. This Circular, which embodies a letter from the Legal Remembrancer having special reference to this case, assumes that Mr. Elphinston's proclamation of the 25th August 1845 was in the usual form. It might have been in the usual form for proclamations attaching property, but as Mr. Elphinston could not issue such a proclamation without the sanction of the Sudder Foujdaree Adawlut, and sanction for that proclamation he had never obtained, though he had obtained it for

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another of a different tenor, it was not a proclamation in the usual form, nor was it a legal proclamation at all.

In the third paragraph it is assumed that the 'wutuns' which had been attached were inherited by the fugitives from their father. Now it is well known that Tookia and Mahankalia's father, Oomajee Naik, was executed for treason, and his property ought to have been confiscated, so that they could have inherited nothing from him; and Gungabaee, in her petition to the Court of the 24th February 1852, expressly says that the Government conferred upon her this property in new Inam; from which I conclude that Oomajee's property was confiscated, and that the property in question was that part of it which, under the provisions of Clause 2nd, Section VI. Regulation XIV. A. D. 1827, the authority adjudging confiscation did "at the same time assign to the family of the offender as a sufficient maintenance out of the property confiscated."

Again, the Legal Remembrancer says that the Magistrate released the attachment under instructions from the Sudder Foujdaree Adawlut in July 1852, a sum of Rs. 2,298-3-9 only, proceeds of the wutun while under attachment, remaining in the Collector's hands. Neither Mr. Jones' nor Mr. Davidson's returns show that the wutun has yet been released, and the arrears or proceeds of it only retained; but whichever might be the case, the Magistrate either has not executed the Court's orders at all, or only executed them in part, and in either case the subject must be laid before Government, in order that the Magistrate might be compelled to carry out the Court's orders in their integrity.

I shall not refer to the 4th and 5th paragraphs of the Legal Remembrancer's letter further than to remark that the proceeds of the property, while under attachment, appear very clearly to be what the Court meant by "arrears;" and shall merely add, in contravention of the 6th paragraph, that I think the Judges of the Sudder

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Foujdaree Adawlut in 1852, and I feel very sure those of the present day would most expressly deny that Government were right in withholding the produce of Inams from criminal Inamdars in any way that the law did not authorise. Had the Magistrate not made a mistake, and had he obtained authority to attach the wutun, a question might have arisen whether the proceeds from the date of the attachment of the property to the date of the capture or death of the accused were not very properly withheld by Government from the family; but now that the property has been attached and held under sequestration without any legal authority for doing so whatever, there cannot be a question but that Government ought, immediately they discovered their error, which should have been as soon as the question was raised, to have restored the property with all proceeds, and even interest too, to the party injured. The law, as quoted above, has mercifully provided that, even when a traitor's property is confiscated, enough shall be assigned for the maintenance of his family; and I do not think, when they reconsider the subject, that Government will endorse Mr. Howard's opinion that greater penalties should result to the family as the consequence of their property being even legally attached, to secure the attendance of a rebel, than would follow its confiscation as the property of a convicted traitor. But that is beside the present question, since the attachment is *ab initio* illegal, and Government will, I doubt not, reconsider the advice given to them by the Legal Remembrancer in the last paragraph of his letter.

Seeing, then, the serious mistake Mr. Elphinston made in the first instance in attaching the property, and that the opinion of Government, upon which the Magistrate has been acting, is founded upon a misconception of the case, I would merely lay the subject before

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Disobedience of the Orders of the Sudder Foujdaree Adawlut by a Magistrate.

Government, who, when they see the real state of the case, will at once, I have little doubt, direct the Magistrate to carry out our orders to their full extent.

I do not care in this instance to urge upon Government, as my brother Judge does, that our decision as regards the law is supreme in all criminal cases, and that the Magistrates are bound to obey it. The very Circular from Government referred to by Mr. Davidson, and certain petitions we have had before us lately on the Civil side, I fear, will oblige us to go to Government with a request that they will instruct the Collectors and Magistrates that no responsibility is incurred by obeying the orders of the Sudder Adawlut, and that our orders must be obeyed, the responsibility for the orders resting with the Judges of the Sudder Adawlut, and the responsibility for the Judges being competent, and not men to give ill-advised, unjust, or illegal orders, resting with the Government who appoint them, or retain them, if incapable, in their appointments.

Final Resolution of the Sudder Foujdaree Adawlut.—Resolved that, under Clause 7th, Section XXIX. Regulation XIII. A. D. 1827, the whole of the Court's proceedings upon the petition, together with the Judges' minutes this day recorded, be laid before Government, with a request that they will direct the Magistrate of Poona to carry out the Court's orders of the 28th July 1852, without further delay.*

* A letter was accordingly addressed to Government, in reply to which it was intimated to the Court that the mesne profits of the estate must follow the wutun; and that the Precept of the Court must be strictly obeyed by the Magistrate, and arrears paid to the *widow* of Oomajee: whereupon the Court re-transmitted their former Precept to the Magistrate for full execution; and he was also called upon to explain why, if the wutun was restored in 1852, it was not so certified by him in his former return to the Precept.

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NASSICK.

Present, { WILLIAM HENRY HARRISON, / ROBERT KEAYS, } Puisne Judges.

[Case No. 1 of the Criminal Return of the Magistrate of Nassick for October 1855. Tried by the Assistant Magistrate, S. M. PELLY, on the 4th and 5th October 1855. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Robbery by Night, with Force; and Receiving Property which he knew, or had good reason to suspect had been Stolen.

Prisoner.—Chunda wulud Luximon, Kolatee, aged 23.

Charge.—Robbery by night, with force (Regulation XIV. of 1827, Section XXXVI. Clause 3rd); in having, between the 26th August and 2nd September 1855, (Mitee Shrawun Shood 14th, Shuké 1777, and Shrawun Wud 6th, Shuké 1777,) at Punchwuttee and Nassick, Talooka Nassick, Zillah Ahmednuggur, stolen, from the houses of the five following complainants, copper and brass utensils, as also cloth, to the value specified opposite each name, viz.:—

Bhemal murd Gungaram	Rs.	1	15	0
Byah murd Chimnajee		5	11	6
Govindas Gooroo Leywadas		0	2	0
Bhyroo wulud Bhowanee		0	7	6
Saloo murd Appa		0	9	9
Total....	Rs.	8	13	9

Total amount of value, rupees eight, annas thirteen, and pies nine.

Prisoner is also charged, under Regulation XIV. of 1827, Section XLI. Clause 1st, with receiving property which he knew, or had good reason to suspect had been stolen; in having, at the time specified in the first charge, at Nassick, Talooka Nassick, Zillah Ahmednuggur, received the property which had been stolen from the abovenamed complainants, amounting to Rs. 8-13-9.

Prisoner pleads not guilty.

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Robbery by Night, with Force; and Receiving Property which he knew, or had good reason to suspect had been Stolen.

S. M. Pelly, Assistant Magistrate.

Finding and Sentence by the Assistant Magistrate.—The prisoner is accused of stealing various articles of small value belonging to the five complainants; or of having received the articles, knowing, or having good reason to believe that they were stolen. In his defence he states that a portion of the property he is accused of stealing was given to him by his sister, another part by his deceased mother, and that he bought the remainder, an old 'rozaie,' at Bhewndy. He did not steal anything, or receive any stolen property.

Against this unsupported statement are the depositions, on solemn affirmation, of the five complainants, each supported by those of two witnesses, to the effect that the various articles before the Court belong to them, the complainants. There are no marks, however, by which they can be identified, but such as are common to hundreds of similar articles.

The articles before the Court are some of them of such a description as is not usually found among the class of people to which the prisoner belongs; but as presents are sometimes given to them in lieu of money, and the value of all the property together is only Rs. 8-13-9, there is no absolute improbability of their having been obtained by the prisoner in an honest manner.

The articles may, and probably do belong to the complainants; but that is not the question to be decided here. The points for consideration are,—Did the prisoner steal the articles? or did he receive them from some one else, under suspicious circumstances, as set forth in the charges?

In the opinion of the Assistant Magistrate, there is not the slightest particle of evidence to show that the prisoner stole the things himself, nor is there any that he received them from any one, knowing, or having good reason to suspect that they had been stolen.

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Robbery by Night, with Force; and Receiving Property which he knew, or had good reason to suspect had been Stolen.

The prisoner must therefore be discharged for want of proof, and he is ordered to be discharged accordingly.

As, however, there are strong presumptive reasons for suspecting that he did steal the complainants' property, and as he is shown by the report of punishments (No. 18) to be a man addicted to thieving, the Assistant Magistrate is of opinion that measures should be adopted to prevent his following such an evil habit for, at any rate, some time to come; and he therefore directs that the prisoner shall find some respectable person who is willing to give security to the amount of one hundred (100) rupees, or, in default, to undergo six (6) months' ordinary imprisonment, that he, Chunda, will not commit theft, or any other punishable offence, for the space of one (1) year.

Should the prisoner not be able to furnish the required security at once, he is to remain in the Nassick Jail during such portion of the year as he may continue unable to do so. (Regulation XII. of 1827, Sections XXV. and XXVII. Clause 1st.)

Precept issued by the Sudder Foujdaree Adawlut to the Joint Magistrate.—The Joint Magistrate is to be requested to explain how the petitioner, pleading guilty to robbery, appears to have been sentenced only to find security.

Return by the Joint Magistrate to the Precept of the Sudder Foujdaree Adawlut.—With reference to the extract from the Court's proceedings accompanying this Precept, the Joint Magistrate has the honour to state that the prisoner, Chunda wulud Luximon, pleaded not guilty before the Assistant Magistrate of Nassick, but that the word "guilty," in the column of the Register of Petitions, was written through an oversight.

Further Precept issued by the Sudder Foujdaree Adawlut to the Joint Magistrate.—The Joint Magistrate is to be requested to certify the papers and proceedings.

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[R]obbery by Night, [w]ith Force; and [R]eceiving Propert[y] which he knew, [o]r had good rea[s]on to suspect had [b]een Stolen.

Further Return by the Joint Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Joint Magistrate of Nassick has the honour to certify the papers and proceedings in the case of the prisoner named in this Precept.

Precept issued by the Sudder Foujdaree Adawlut to the Joint Magistrate.—This Precept and proceedings (the latter certified apparently by mistake) are returned to the Joint Magistrate of Nassick, who is requested to certify the proceedings in the case of Chunda wulud Luximon.

Return by the Joint Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Joint Magistrate of Nassick has the honour to certify the papers and proceedings in the case of Chunda wulud Luximon.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoner is rejected.

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BELGAUM.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 62 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the First Assistant Magistrate of Belgaum, W. H. HAVELOCK, on the 29th April 1856. Tried by the Session Judge, A. W. JONES, on the 14th and 16th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Murder.

Prisoner.—Teekaram bin Ramsing, Rajpoot, Hindoo, aged 40.

Charge.—Murder (Regulation XIV. Section XXVI. Clause 1st, A. D. 1827); in having, on the night of Wednesday, the 16th April 1856, (corresponding with Chuitru Shood 11th, Shuké 1778,) at Uthnee, in the Uthnee Talooka, in the Belgaum Division of the Dharwar Zillah, with intent to kill, struck a blow with a stone, or some hard instrument, on the left temple of one

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Thukaee, a Mahomedan widow, and also made a thrust with a stick into the *vulva* of the said Thukaee, from which blow on the temple with a stone or some hard instrument, or thrust into the *vulva* with a stick or other hard instrument, or from both causes concurring to produce death, she, the said Thukaee, then and there died.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoner is charged with murder, and pleads not guilty.

It appears that a Peon (witness No. 8), when passing along a street in Uthnee, on the morning of Thursday, the 17th April last, was attracted by seeing a little girl at the door of a house crying, and, on asking what was the matter, he was told by the child that her mother had been killed by two persons whom she named (the prisoner at the bar, and a woman, his sister); she then took him into the house, where he saw the dead body of a woman lying on the floor, on which he immediately went and reported the matter to the Police Amuldar.

The Police Amuldar ordered the Duffedar, Sidba, to go and arrest the prisoner, and had an Inquest held on the body, report of which was proved before the Court, and shows that, in their opinion, the deceased had died from some sharp instrument or stick having been thrust into her private parts. As, however, there was a bruise on the temple which had caused blood to flow from her mouth, it is probable that the injury to the head was quite as much the cause of death; and one can only hope, therefore, that the other horrible act of violence was committed while the wretched woman was already insensible from that blow.

The Inquest Report states, and the Session Judge thinks, that there is no question but that the deceased was murdered from ill-will, as she was too poor to have been killed for the sake of anything she possessed.

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It is shown that the prisoner had a criminal connexion with the deceased, and that they were in the habit of quarrelling; and the complainant, a very intelligent child, says that, only a few days before the murder, the deceased returned home from the house of the prisoner with the mark of a blow on the back of her head, which mark is shown by the Inquest Report to have been quite perceptible when the members of it examined the body.

This child deposes that on the night of the murder she was taken to sleep on the flat roof of the house of a woman named Amba, who is the sister of the prisoner, and that there were other persons there; that some time after she had gone up the woman Amba went down from this terrace, and that soon after she saw her with a man, who, she deposes, resembled the prisoner, go into her mother's house, the door of which is visible from the terrace, and that soon after she heard screams; that, though she began to cry, she was afraid of awaking those who were sleeping near her to tell them what she heard; and the Session Judge cannot think with the Assistant Magistrate that this reason is unsatisfactory; for the wrongs of a very poor woman, living with a man of a different religion, would probably not excite much sympathy among her neighbours, and her daughter might very naturally be unwilling to wake people up late at night to interfere in her favour, when, whatever she might think, they could not anticipate the quarrel would have worse consequences than those they had frequently heard of before.

It is then shown by a woman (witness No. 6) who slept on this night on the terraced roof of Amba's house, in which also she lodged, that she heard the deceased crying during the night, and the voice of the prisoner abusing her; but that, as she had often heard the deceased crying, she thought nothing of it, and as she did not

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remove the cloth with which her head was covered as she slept, she did not see who was on the roof beside her.

Then another lodger in Amba's house, which is opposite and quite close to that of the deceased, states that on his return from work at about 10 P. M. on that night, the prisoner came to his house for a short time, and that afterwards, when he happened to awake later in the night, he heard the deceased moaning, and the voice of the prisoner abusing her; but that, having often heard these quarrels before, he took no notice, and went off to his work next morning early without making any inquiries about it.

The time given by this witness for hearing these sounds of quarrel differs considerably from that given by the child; but a child may not be able to estimate correctly the time at which a fact occurred, without at all diminishing the value of her evidence as to that fact. The Session Judge does not see any reason to doubt the evidence of these two neighbours, whose depositions were taken one after the other on the next day after the murder, and who are not shown to be influenced by any ill-will or dislike to the prisoner.

It would sufficiently account for the prisoner's imprudence in speaking so loud as to be overheard, while beating the deceased, to suppose, what appears most probable, that he did not intend to commit murder at first, but that, when once roused, he gave loose to one of those violent fits of passion which Natives so commonly indulge in towards and on account of their women.

The prisoner's defence is merely a denial of the charge; but he admits he left Uthnee very early in the morning after the murder, and the Police Duffedar, who followed him to Sookunhuttee, declares that he found him talking in a back yard with two other persons, and that on his appearance the conversation suddenly ceased, and that his countenance fell at once when arrested, though he

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did not tell him the cause of his arrest. And it is shown, by the evidence of one of the persons with whom he was thus found conversing, that he had come to him once or twice that morning, and had tried to persuade him to testify to his having been at the village four days, because the woman he kept had taken some medicine and had died, and he was afraid the blame would fall on him.

Under these circumstances the Session Judge is of opinion that the evidence is sufficient to warrant the conviction of the prisoner of the charge, and he is accordingly convicted of murder; in having, on the night of Wednesday, the 16th April 1856, (corresponding with Chuitru Shood 11th, Shuké 1778,) at Uthnee, in the Uthnee Talooka, in the Belgaum Division of the Dharwar Zillah, with intent to kill, struck a blow with a stone, or some hard instrument, on the left temple of one Thukaee, a Mahomedan widow, and also made a thrust with a stick into the *vulva* of the said Thukaee, from which blow on the temple with a stone or some hard instrument, or thrust into the *vulva* with a stick or other hard instrument, or from both causes concurring to produce death, she, the said Thukaee, then and there died.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, the following sentence is passed :—

That you, Teekaram bin Ramsing, be taken to the common place of execution at Dharwar, and there be hanged by the neck till you are dead. Subject to the confirmation of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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BELGAUM.

[Case No. 29 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the First Assistant Magistrate of Belgaum, W. H. HAVELOCK, on the 1st March 1856. Tried by the Session Judge, A. W. JONES, on the 4th, 5th, 7th, 8th, and 14th April, and 1st and 5th May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut on the petition of the prisoner.]

Abuse of Authority as a Police Officer.

Prisoner.—Hunmunt Bheemajee, Brahmin, aged 30.

Charge.—Abuse of authority as a Police Officer (Regulation XII. A. D. 1827, Section VIII. Clause 1st); in that, between Monday the 4th and Wednesday the 6th June 1855, (corresponding with Jesht Wud 4th and 6th, Shuké 1777,) when inquiring into the circumstances of the death of a cow found dead in the field of one Jooma bin Bhyroo, in the village of Seergoopee, in the Chikoree Talooka, in the Belgaum Division of the Dharwar Zillah, which cow was alleged to have been maliciously killed, he (the prisoner) inflicted bodily injury upon the said Jooma bin Bhyroo, at Waree, a hamlet subordinate to Gulutgee, in the Chikoree Talooka, by causing him to be suspended to the branch of a tree by a rope passed under his arm, and then by beating him with a stick, in order to extract from him information respecting the death of this cow.

Prisoner pleads not guilty.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoner is charged with abuse of authority as a Police Officer, in having hung up to a tree and beaten one Jooma bin Bhyroo.

It appears that, about the beginning of June 1855, a cow was found dead in the village of Seergoopee, near the field of Jooma bin Bhyroo, the complainant in this case, and that the Police Patel of the village, in consequence, sent him to Chikoree, in charge of a Shetsundee, with a report, and they were accompanied by

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Vikkoo, the owner of the cow, and Appa, a servant or attendant of Jooma's.

At Chikoree, Jooma was made over to the charge of the prisoner, in the absence of the Police Amuldar and Joint Police Officer, and the complainant and some of the witnesses depose that he was beaten there by direction of the prisoner; but the persons who are said to have struck the blows by the prisoner's orders deny having touched the complainant; and as, moreover, this beating does not form part of the charge, the point need not be gone into.

It is shown, and admitted by the prisoner, that, after having been detained one day at Chikoree, Jooma was taken by his orders to Waree, a small hamlet, said to be about half a koss from Gulutgee; and it is admitted also that all the witnesses in the case went there. The prisoner also admits that from Waree he went to a garden not far off it, where there is a well and some mango trees.

The complainant's story is that he was hung up to a tree and beaten in this garden, which the prisoner denies altogether. The question entirely rests, therefore, on the credibility of the witnesses to this beating.

The complainant says that his servant Appa and Bapoo Shetsundee were with him at Waree, and that in the Chowree there his arms were tied behind him with his own 'pugree,' and that he was taken out of the village to some mango trees near a well, by the Joint Police Officer, Satoo Sepoy, Sukoba and Bapoo, Shetsundees; that the Joint Police Officer ordered a rope to be brought, which was fastened to the cloth round his arms, by which he was hoisted up to the tree—he does not recollect exactly who did this; that he was let down after a little time, and water given him; then he says his arms were unloosed, and his feet tied together with the cloth by the Joint Police Officer, and the rope attached to it, and that

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Bapoo and Sukoba held him, and he was drawn up with his head downwards; that Soobhana came towards them after this from the well, but was abused and sent off again by the Joint Police Officer; that he was kept hanging in this manner for twenty minutes, and after this was taken back to the village Chowree, and kept in charge there; that it was 10 A. M. when he was thus hung up.

The witness No. 3 (Bapoo Shetsundee), of Gulutgee, says that the Joint Police Officer came to Gulutgee, and that he (witness) accompanied him to Waree; that at the Chowree the cloth Jooma (the complainant) wore on his head was tied round his arms behind; and that he was then taken by Satoo Sepoy, Sukoba, and witness and others, to a garden; that there a rope was tied to the cloth by Joint Police Officer; that witness and Sukoba helped to hoist the complainant; that the Joint Police Officer then beat him, and kept him hanging for twenty minutes, when he was let down, and the cloth was tied to his feet; that this time Sukoba and Satoo held him, while the Joint Police Officer hoisted him up, and, having tied the rope, beat him; that as Jooma still denied all knowledge of how the cow died, he was then ordered to be let down, and he and the rest were ordered to take him back to Waree, where they all returned, and Jooma was put in charge of witness and Sukoba; that it was when complainant was hanging the second time that Soobhana came up; that Jooma was first hung up at 9 or 9½ o'clock.

Witness No. 4 (Sukaram Shetsundee), of Gulutgee, says that in the morning at about 9½ or 10, the Joint Police Officer came to Waree, and was followed soon after by Jooma, who was in arrest; that he held Jooma, by order of the Joint Police Officer, while his arms were tied with the pugree he wore; that the Joint Police Officer, Bapoo Shetsundee, Soobhana, and Satoo took

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Jooma to a garden; that Soobhana came to this garden and then disappeared; that the rope was tied by the Joint Police Officer to the cloth round Jooma's arms, who was strung up by it; the witness and Bapoo held him, and the Joint Police Officer hoisted him—he forgets whether any one helped the Joint Police Officer in this; the Joint Police Officer then struck Jooma with a stick and his fist, and threw clods of earth at him; he was kept hanging ten minutes; no one came to the garden during this time; witness let him down, and the Joint Police Officer tied the cloth round his feet, and hoisted him up head downwards; he was not struck during this time; witness did not see Soobhana after he had disappeared as above; Satoo Sepoy was then standing by, but doing nothing; after this all went back to the Chowree.

Soobhana Sepoy (witness No. 5) states that he followed the Joint Police Officer with his bed and 'kumblee' to Gulutgee Waree, where he had gone about a robbery; he reached Waree at 8 A. M., and went to a nulla to bathe; on his return to the Chowree, heard Joint Police Officer and others were at the garden, and so went there, and saw the Joint Police Officer, Jooma, Bapoo, Sukoba, and Satoo; Jooma was tied up by his arms; the Joint Police Officer was standing and sitting alternately, and desiring Jooma to speak; the Joint Police Officer called out to witness there was no occasion for him to stand there, so witness returned to Waree; he says he stood by the well while looking on.

Satoo Sepoy (witness No. 6) states that he accompanied the Joint Police Officer and Yenkoo first to Gulutgee and then to Waree; does not remember if any Sepoy was with them; that Soobhana followed with the prisoner's 'duftur.' After a short time, by order of the Joint Police Officer, witness, Sukoba, and Bapoo, took Jooma to a garden; that the witness went back to Waree for the Joint Police Officer's 'dhotur,' and on his return

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found Jooma was hung up to a tree; the Joint Police Officer picked up clods of earth and flung them at him. Jooma was then taken down by Sukoba and witness, and water given him by Yenkoo. He still denied all knowledge of how the cow died; then the Joint Police Officer went to wash, and witness went away to the village for his dinner, leaving all the others there. On going to the Chowree after bathing, he found there the Joint Police Officer, Jooma, Bapoo, and Sukoba; he only saw Jooma hung with his head up; he saw Soobhana come up behind him on his return, and heard the Joint Police Officer order him to go away.

There are some discrepancies in the evidence of these persons, but they do not seem to be of consequence, considering that the facts they depose to occurred nearly a year ago. The chief disagreement relates to the appearance of the Sepoy Soobhana, which the complainant and Bapoo (witness No. 3) say took place when Jooma was hanging by his feet; whereas Soobhana says he only saw Jooma hanging by his arms; and Satoo Sepoy, who says he was close by him on his coming up, supports this, while Sukaram Shetsundee says he did not see Soobhana come up at all. The other disagreements relate to trifling things, and seem rather to show that no previous arrangement as to their evidence was made by these witnesses, than that they throw discredit on their story. The Session Judge has little doubt that the Shetsundees have softened their own share in the matter, and perhaps have also stated that more was done by the prisoner himself with his own hands than was actually the case; but that they and the others tell the truth as to the main point, viz. that the complainant was hung up as stated, and by the orders of the prisoner, the Session Judge can see no reason to doubt.

The causes of enmity described by the prisoner as existing between these witnesses and himself do not

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appear to be such as could have induced persons belonging to three different villages to combine and make up such a charge against a man in the prisoner's position; and there is nothing whatever to lead one to suppose that they ever met after the visit to Waree to consult about it.

The prisoner in his defence, however, states that four persons were with him at the garden outside Gulutgee Waree from the time of his leaving the village till he returned to it; but three of them do not support this story—that is in the only point that is important; for two of them say that they went to the garden at about 10 or near 11, and saw the Joint Police Officer with two or three or four persons there, and that when they left, the prisoner was still there; the third says that he went to the garden but did not see the Joint Police Officer, though he was told by one of the other two that he was there. Now this evidence is of no use to the prisoner; for it may be quite true, and yet all that the witnesses for the prosecution have stated may be true also, for these three witnesses for the defence clearly were not with the prisoner from the time he left the village till he returned to it, and the hour at which they say they went to the garden is later than that at which the evidence for the prosecution shows the prisoner and the complainant and others first went there.

The other witness (No. 16) cannot be believed, as he declares he never saw Jooma at all at Waree, though there can be no doubt that he saw him there, for the Police Patel of the village admits having seen him. The only witness who does depose to the point is the prisoner's servant (No. 17), who declares that he was with the prisoner from the time he left the Chowree at Waree till he returned, and that Jooma was not at the garden. This, however, is the word of one man against that of all the evidence for the prosecution; and, in addition to that referred to above, there is that of a

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Shetsundee of Seergoopee (witness No. 8) and the complainant's servant Appa (witness No. 7), both of whom depose to having seen Jooma taken out of the village of Waree by Sepoys and the Joint Police Officer.

The Session Judge thinks, also, that the fact of this person, Jooma, having been taken to this village of Waree supports the charge. For what was the object of taking him there? It was not a case of robbery, in which he was expected to give up property in any direction; and Gulutgee Waree is not on the road from Chikoree to Seergoopee; it is north-west, and Seergoopee north-east of Chikoree. Why should he have been taken in this direction at all, if it was not hoped to extract a confession from him by some means or other? The Session Judge has before remarked on this practice of carrying prisoners about the country, and he cannot but repeat his opinion that it is objectionable; for, on the one hand, it gives the opportunity of exercising the description of violence against the prisoners which is deposed to in this case, and, on the other hand, it gives the prisoners an occasion of making such charges, which, even when unsupported by evidence, tend to discredit the confessions of prisoners obtained under such circumstances.

On considering the whole case, therefore, the Session Judge is of opinion that the evidence is sufficient to warrant the conviction of the prisoner, and he is accordingly convicted of abuse of authority as a Police Officer; in that, between Monday the 4th and Wednesday the 6th June 1855, (corresponding with Jesht Wud 4th and 6th, Shuké 1777,) when inquiring into the circumstances of the death of a cow found dead in the field of one Jooma bin Bhyroo, in the village of Seergoopee, in the Chikoree Talooka, in the Belgaum Division of the Dharwar Zillah, which cow was alleged to have been maliciously killed, he (the prisoner) inflicted bodily

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injury upon the said Jooma bin Bhyroo, at Waree, a hamlet subordinate to Gulutgee, in the Chikoree Talooka, by causing him to be suspended to the branch of a tree by a rope passed under his arm, and then by beating him with a stick, in order to extract from him information respecting the death of this cow.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XII. Section VIII. Clause 2nd, the following sentence is passed :—

That you, Hunmunt Bheemajee, be imprisoned for two (2) years, and further pay a fine of five hundred (500) rupees, or be imprisoned for another year.

The Session Judge observes, that the evidence of the witnesses was not taken by the Police Superintendent in the presence of the prisoner, although the prisoner was in attendance at the time : this is contrary to the directions of the Printed Circular No. 411.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut.—The Superintendent of Police being in Court, the Session Judge should have ascertained from him—Jooma's own account being open to doubt—how he first received the complaint. There are irregularities in this trial not usually to be found in cases received from Mr. Jones.

The witnesses for the defence were first examined; then a written defence recorded, which should not have been recorded at all; then more witnesses were called for the defence.

Hunmunt in his defence mentions cause for Soobhana, Sutoo, Sukaram, and Bapoo bearing enmity against him. He questioned none of them on this point, except Soobhana, who was asked whether Hunmunt ever warned him not to trade,—the statement in the defence being that he was at enmity with him, because he had a field at Chikoree, and was sent to do duty at Hookeree. I therefore have little doubt but there are no grounds

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for suspecting these witnesses of bearing any enmity at all.

It would have been more satisfactory had the prisoner's proceedings, when inquiring into the death of the cow, been recorded, as that would have shown the prisoner's own account of himself, and why he took Jooma from Chikoree to Gulutgee Waree, which he certainly had no ostensible reason for doing; and I see no cause for interference with either the conviction or sentence.

R. Keays, Puisne Judge.

The charge against the prisoner in this case was abuse of authority, in having endeavoured to extort information regarding the death of a cow, which was found dead in his field, from one Jooma, the complainant in the present case, by torture.

I regret to say that I consider the charge most fully proved: no less than five witnesses depose to having assisted, by order of the prisoner, in hanging the prosecutor up to a tree, first by his arms, and then by his feet, and to having seen the prisoner himself beat and ill-use him. I concur with the Session Judge that the discrepancies in the statements of these witnesses are not such as to vitiate their evidence; that they tend rather to render it more trustworthy, as relating merely to trifling matters, on which a similarity in the minutest particulars would have laid their statements open to the suspicion that a combination had been formed amongst them, and that they had previously determined what they were to say.

The prisoner has also challenged their evidence on the score of asserted enmity between himself and them; but of this no evidence has been adduced, and the causes assigned by the prisoner are insufficient to establish the fact even by inference. The witnesses belong to three separate villages, and it is altogether improbable that any combination should have been formed by them to ruin the prisoner.

The prisoner has met the accusation with a denial, and

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called five witnesses to prove that he did not commit the offence with which he has been charged; but in this also, as noticed by the Session Judge, he has completely failed; and the only exception I can take to any of the proceedings is the fact of the witnesses having been examined by Mr. Souter in the absence of the prisoner. This irregularity is not sufficient, however, to vitiate the trial before the Session Judge, and as it has been noticed by him to the Magistrate, further observation on it is unnecessary. I am of opinion that both conviction and sentence should be upheld, and the prisoner's petition of appeal rejected.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoner is rejected.

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DHARWAR.

Present, WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, Puisne Judges.

[Case No. 9 of the Criminal Return of the Deputy Magistrate of Dharwar for March 1856. Tried by the Deputy Magistrate, VITTUL ROW NARRAIN, on the 15th March 1856. Proceedings certified, on the requisition of the Sudder Foujdaree Adawlut.]

Abuse of Authority.

Prisoner.—Murrey Gowda bin Heereymurrey Gowda, Gowlur, aged 35.

Charge.—Abuse of authority (Regulation XII. Section VIII. Clause 1st); in having exacted Rs. 0-10-8 from a Ryot named Sidlapa, on pretence of setting up a wooden frame to a well at the village of Kotedomnahghee, Talooka Dumbul, one day in 1854, and appropriated the amount to his own use.

Prisoner pleads not guilty.

Vittul Rao Narrain, Deputy Magistrate.

Finding and Sentence by the Deputy Magistrate.—The prisoner denies that he exacted the amount, or caused it to be so, and asserts that the villagers made a collection among themselves and set up the frame. But witnesses Nos. 2,

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3, and 4, the complainant, and all the individuals whose names are entered in the list recorded in the case as No. 5, assert that the Patel caused the Tulwar to press them for payment, and that they accordingly each paid 8 pies, 12 annas in all, which amount, however, the Patel did not expend in setting up the frame. Witness No. 6 (the Tulwar) deposed that, by order of the Patel, he collected part of the amount from the Ryots, and that the Patel himself collected the remainder from them; that the Patel deposited Rs. 0-10-6 of the amount collected with him, out of which he took back Rs. 0-5-2, which he has produced.

If the Patel had not made a collection from the Ryots, the above balance would not have remained with the Tulwar; nor, had the villagers collected the amount among themselves and set up the frame, would the Tulwar have retained a part of the sum.

The Tulwar must have made the collection by order of the Patel, part of which he has produced. It therefore appears that without orders, and by the abuse of his authority, he (the accused) collected the amount, and, instead of expending it properly, appropriated it to his own use.

There has been, besides, a charge preferred against the accused, that he collected 'jowaree' grain from the people on account of the same well, but it has not been proved against him. The case is, however, sent for the Magistrate's inspection.

As it does not appear right to pardon the accused, inasmuch as he has been convicted in another case of abuse of authority in the ill-treatment of a prisoner and punished, he has been convicted, and, in consideration of his bad character, sentenced to pay a fine of two (2) rupees, or, in default of payment, to suffer one (1) month's simple imprisonment. Out of the fine, when realised, Rs. 0-6-10, Rs. 0-5-2, the balance with the Tulwar, are to be paid

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to the complainants, under Regulation XII. Section XIII. Clause 1st.

The sentence is subject to the Magistrate's confirmation. As the prisoner has no 'wutun' or 'potgee,' this punishment appears sufficient.

Remark by the Magistrate.—The prisoner has been informed that the Deputy Magistrate's conviction and sentence have been confirmed, and, as he has agreed to pay the fine, he is directed to be released on its payment. A letter is to be written to the Mamlutdar of Dumbul relative to the repayment of the complainant. The balance remaining of the fine is to be credited to Government through the Mamlutdar of Hangul.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—With reference to your criminal calendar of cases disposed of during the month of March last, you are hereby requested to certify the papers and proceedings held in the case of the person Murrey Gowda bin Heereymurrey Gowda, No. 9 of the said calendar; returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—Return to the within Precept is hereby certified, by transmitting to the Judges of the Sudder Foujdaree Adawlut the vernacular proceedings held in the case of the prisoner Murrey Gowda bin Heereymurrey Gowda, together with their substance in English.

The Deputy Magistrate has been informed that a previous conviction cannot be admitted as evidence of guilt, though it may be allowed to weigh in passing sentence on a convicted criminal.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut.—The proceedings confirm me in the opinion I formed on reading the

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return, that the case was not one of abuse of authority, but that the charge should have been one of fraudulent appropriation of property. I do not, however, think the charge proved, and would direct the Magistrate to repay the fine.

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Abuse of Authority.

Resolution of the Sudder Foujdaree Adawlut.—The Court will not interfere.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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TANNA.

[Injunction issued by the Magistrate of Tanna, E. C. JONES, and referred by that Officer to the Sudder Foujdaree Adawlut on 14th June 1856.]

Injunction by the Magistrate.

Injunction under Regulation XII. of 1827, *Section XIX. Clause* 1*st.*—The Magistrate of Tanna institutes the following rules regarding the erection of wedding-sheds or 'mandwas,' in all places of public resort within the towns of Dahanoo, Bassein, Panwell, and Bandora, in the Tanna Zillah.

All persons in the abovementioned towns desirous of erecting wedding-sheds, or other places of temporary amusement, in or upon any public street or road, shall apply to the Police Officer of his town for license to erect the same.

And the said Police Officer is hereby authorised to grant the license, and to charge for it at the rate of four annas per ten square yards per night, for the public grounds occupied by the abovementioned shed or mandwa.

And any person enclosing any portion of a public road, or erecting any shed or mandwa in or upon any public place or road within any of the abovementioned towns, without having previously obtained the said license, will be liable to the punishment prescribed in Clause 6th of the abovequoted Regulation and Section.

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TANNA.

Injunction by the Magistrate.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward a copy of an Injunction (with its translation) issued by me in the towns of Dahanoo, Bassein, Panwell, and Bandora, in this Zillah, under Section XIX. Regulation XII. of 1827.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to inform the Court of the necessity for issuing this proclamation.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate of Tanna begs to state that the necessity for issuing the proclamation in the towns in question is exactly the same as that which existed in the towns of Tanna, Chendnee, Bhewndy, Callian, Penn, and Mahar, where similar injunctions have already received the sanction of the Court, viz. to prevent the public roads being contracted by the erection of sheds or awnings, thereby causing inconvenience to passengers and traffic.

Resolution of the Sudder Foujdaree Adawlut.—This appears to be a matter of Police, and one in which the Court cannot interfere. They do not, however, think that Section XIX. Regulation XII. A. D. 1827 is the proper course to adopt. The Magistrate may make these rules; that is, that people must obtain leave before closing the roads, and pay rent for what they enclose; and if any man acts contrary to these, by erecting a shed without leave, the Magistrate might then proceed against him.

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DHARWAR.

Present, William Edward Frere, William Henry Harrison, Robert Keays, Puisne Judges.

[Reference from the Magistrate of Dharwar, T. Ogilvy, on July 3rd, 1856, in respect to two Men who had returned to the Zillah from which they had been expelled.]

Returning from Expulsion.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to request that you will do me the favour to acquaint the Judges of the Sudder Foujdaree Adawlut that a report has been received from the District Officer of Misreekote, Talooka Hooblee, to the effect that it has come to his knowledge that three persons, named Rutno bin Limba, Narain oorf Ranoo bin Jeewa, and Luxumea bin Poorea, Lumbanees, who were expelled from the Zillah by the Magistrate of Dharwar, in November and December 1833, in consequence of their native country being unknown, and their inability to furnish security for their future good conduct after having been convicted of theft, have been peaceably following their avocation for the last eight years at the village of Bwanggeetee Goodeehal, Péta Misreekote.

Under these circumstances, I beg that I may be favoured with authority from the Judges, under the provisions of Regulation XII. Section XXVIII. Clause 4th, to recall the sentence of expulsion passed on those persons.

Resolution of the Sudder Foujdaree Adawlut.—The sentence of expulsion may be recalled.

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COLABA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Petition of Gopal Dhondeo to the Sudder Foujdaree Adawlut referred to the Joint Magistrate of Colaba, L. REID, for Report, on the 18th June 1856.]

Breach of the Peace.

Precept of Gopal Dhondeo to the Sudder Foujdaree Adawlut.—[Praying that the fine of Rs. 14, imposed upon him by the Police Amuldar, might be annulled, there being no proof against him.]

Precept issued by the Sudder Foujdaree Adawlut to the Joint Magistrate.—You are hereby requested to certify the papers and proceedings, together with your report upon the matter set forth in the accompanying petition, presented to this Court by Gopal Dhondeo, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Joint Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In obedience to the instructions contained in the within Precept, the Joint Magistrate of Colaba has the honour to certify the papers and proceedings in the case of Gopal Dhondeo, and to report that, on the Dussera holiday, being the 10th Ashwin Shood, Shuké 1777, (corresponding with 20th October 1855,) the inhabitants of Moujé Poladpoor presented a petition to the Police Amuldar of Péta Kondvee, Talooka Rygur, in this Joint Magistracy, to the effect that the petitioner, Gopal Dhondeo, had signified his intention to take the lead in the ceremony of plundering the 'sona,' or leaves of the 'apta' tree planted by them on that day, before the usual religious

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Breach of the Peace.

observances had been completed; that, as such was contrary to the existing custom of their religion, it would be very distasteful to the community at large, and likely to lead to a disturbance. The Police Amuldar accordingly issued verbal orders to the petitioner, Gopal Dhondeo, on the subject, and placed two Police Sepoys at the place to preserve good order; in spite of which the petitioner forcibly plucked the leaves, in resistance to the orders of the Sepoys, and by so doing deprived the majority of the inhabitants of their holiday; and it was only owing to the exertions of the Police Amuldar and the good sense of the crowd that a disturbance did not take place.

The petitioner was accordingly convicted of resisting the Sepoys in the discharge of their duty (Regulation XII. of 1827, Section XII. Clause 1st), and sentenced to pay a fine of fourteen (14) rupees, in default to suffer fourteen (14) days' imprisonment. On appeal, the decision was confirmed. The petitioner has a wide-spread reputation as an unseemly brawler and a mendacious busybody.

The petition which accompanied this Precept is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the petitioner is rejected.

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Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

Ahmedabad.

[Case No. 24 of the Criminal Return of the Magistrate of Ahmedabad for February 1856. Tried by the Assistant Magistrate, H. Bulkley, on the 25th February 1856. Reviewed on Appeal by the Magistrate, J. W. Hadow, on the 27th March 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Serious Assault.

Prisoner.—Bhogeelal Vuzoobhaee, Hindoo, aged 22.

Charge.—Serious assault (Regulation XIV. A. D. 1827, Section XXIX. Clause 1st); in having, on or about the 12th December 1855, committed a serious assault on one Luxumneea Doongreea, shepherd, inhabitant of Kunera, Purgunna Jeytulpoor, Zillah Ahmedabad, by kicking and beating him, whereby the health of the aforesaid Luxumneea was seriously affected for about the space of two or three days.

Prisoner pleads not guilty.

H. Bulkley, Assistant Magistrate.

Finding and Sentence by the Assistant Magistrate.—The Court, having considered the evidence before it, is of opinion that the assault is clearly proved. The prisoner, in his defence and cross-examination of the witnesses, endeavoured to fix the charge on the Mookhee of his village, but failed lamentably. Attached to the proceedings is a 'punchayutnama,' descriptive of the complainant's state of body for two or three days subsequent to the assault: from this it will be seen that it was of an aggravated character. The Court therefore sentences the prisoner to two (2) months' ordinary imprisonment.

The sentence is declared to the prisoner, who is removed in an excited state.

J. W. Hadow, Magistrate.

Reviewed by the Magistrate on Appeal.—The prisoner has appealed in this case, but the Magistrate, on a careful review of the proceedings, finds no reason to interfere with the conviction or sentence, and the prisoner is to be informed accordingly.

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AHMEDABAD.

Serious Assault.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to certify papers and proceedings, together with his report, regarding the charge of assault brought by the Karkoon against the Surveyor having been compromised.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In certifying the papers and proceedings called for in the extract of the Court's proceedings which accompanied this Precept, the Magistrate of Ahmedabad has the honour to state, that in reply to a reference made to the Assistant Superintendent of Revenue Survey, alluded to in the petition herewith returned, Mr. Bulkley informs him that, to the best of his recollection, no charge of assault was ever brought against him by any Karkoon in his office or out of it.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause for interference, and reject the petition.

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SHOLAPORE.

Present, WILLIAM HENRY HARRISON, ROBERT KEAYS, Puisne Judges.

[Case of Sevmoortheapa bin Sungun Busapa. Tried by the Deputy Magistrate, W. RAYMER, on the 24th June 1856. Reviewed by the Magistrate, W. A. GOLDFINCH, on the 25th and 26th June 1856. Proceedings submitted for the consideration of thé Sudder Foujdaree Adawlut, by the Magistrate.]

Disobedience of an Injunction issued by Competent Authority.

Prisoner.—Sevmoortheapa bin Sungun Busapa, Wanee, aged 55.

Charge.—Disobedience of an Injunction issued to him by competent authority (Act No. XXI. of 1841, Section II.); in that, having received an order from the Deputy Magistrate, dated 24th April 1856, (corresponding with the 4th Chuitru Wud, Shuké 1778,) to remove within two months the wall of a house belonging to him, which had been built up against repeated orders, situate in the Mungulwar Péta, in the Town, Talooka, and Zillah of

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SHOLAPORE.

Disobedience of an Injunction issued by Competent Authority.

W. Raymer, Deputy Magistrate.

Sholapore, for the purpose of having the road widened there, according to a memorandum dated 14th February 1855, which was drawn up under instructions from the Magistrate, he failed to do so.

Finding and Sentence by the Deputy Magistrate.—Prisoner pleads guilty to the charge, after its being read over and explained to him; and as the question does not turn as to whether he had or had not himself built any part of the wall alluded to, though it was declared against him by Peon Rajah Mahomed, who has since been dismissed, before the Foujdar, that he did; yet, as the Injunction to him was clear to remove it, and he has failed to obey it, the Deputy Magistrate is of opinion, under the circumstances brought forward under which the order for its removal was given, and the fact, by his own admission, of his residing in the house long previous to and at the time the wall was built, that he was fully aware of the repeated orders prohibiting its erection; and that he is therefore clearly guilty of the charge preferred against him.

That he, prisoner Sevmoortheapa bin Sungun Busapa, do pay a fine of forty (40) rupees, or, in default, that he be imprisoned without labour for one (1) month, under Act No. XXI. of 1841, Section II.

In the event of the fine being paid, the expense of removing the wall to be defrayed therefrom, as well as from sale of the materials composing it.

W. A. Goldfinch, Magistrate.

Reviewed by the Magistrate.—The Magistrate has reviewed this case, and confirms the decision of the Deputy Magistrate, which is to be carried into effect without delay.

The Magistrate observes that the wall, the rebuilding of which has given rise to the case, as personally inspected by the Magistrate, and the Deputy Magistrate's decision, requiring the owner to rebuild it some distance inside its present foundation, was confirmed. This deci-

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Disobedience of an Injunction issued by Competent Authority.

sion by the Magistrate took place many months ago; when, it is not stated, but some time previous to A. D. 1855. It must have been by the gross negligence and apathy of the Authorities in charge of the town the owners of the house have been allowed, in direct defiance of the order, to build up a solid stone wall on its former site; this contempt of authority remaining unnoticed until the 24th of April, when the contumacious householder is given a period of two months to remove his obstructive wall.

Mr. Raymer is requested to bear in mind that opposition to the law is invited by vacillation and want of firmness on the part of those entrusted with its administration. Throughout this case these two failings have been very conspicuous, and the negligence which permitted without check or interference of any kind the raising of a solid stone wall (which must have been a work of time), in direct opposition to the Magistrate's order, proves that the Deputy Magistrate's care of the state of his charge is very lax and superficial.

The proceedings in this case exhibit (which the Magistrate had already remarked with regret) a strong tendency to much writing, and a disposition to call for long reports from his subordinates on the part of the Deputy Magistrate, instead of the active personal exertion in the conduct of affairs connected with the town which is expected of him, and without which he cannot efficiently perform his duties.

* * * * * * * *

This day a large number of the respectable traders of the town present themselves before the Magistrate, and urge in behalf of the prisoner in this case that the wall in question took about three months to build, during which time no opposition whatever was offered by any of the Authorities; that the prisoner, in full confidence that his proceedings were allowed, completed the work;

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and now the wall is in fact an integral portion of his house, the complete destruction of which is involved in the removal of the wall.

The petitioners further state that the street is not narrower at this particular spot than in any other part, and that the prisoner will bind himself (in the event of the above decision not being enforced) to remove the wall of his house at the requisition of the Magistrate whenever a general widening of the street may make it necessary.

The Magistrate cannot but admit the force of the petitioners' representation, most respectfully and becomingly brought forward; and as it appears that the enforcement of the decision would be almost utter ruin to the prisoner, and its rescision a highly popular act; and taking into consideration the fact that the prisoner has been tempted into the commission of the offence charged against him by the gross negligence of the town Authorities, the Magistrate would, if he had not already reviewed the case and approved of it, have annulled the decision. As he is now precluded from this course, he forwards the proceedings to the Sudder Foujdaree Adawlut, for the consideration of the Judges.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the consideration of the Judges, the proceedings in a case, the decision in which I should have annulled had I been able to do so.

There is no doubt but that the prisoner deserved punishment; but as the enforcement of the decision as it stands will prove ruinous to him, and he may have been led to suppose that his conduct was winked at, if not openly approved of by the Authorities, owing to their gross negligence (which on the part of the subordinates I cannot help thinking was wilful), I trust the Judges will see fit to diminish or altogether remit the punishment awarded, and allow the house to stand.

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Disobedience of an Injunction issued by Competent Authority.

I am afraid that the course I have adopted is rather an unusual one; at the same time I do not know what else I could have done, unless it had been to let things take their course, contrary to my conviction of what is right.

I wish the punishment awarded to be remitted, not only because, if enforced, its consequences will be heavier than under the circumstances the prisoner deserves, but it will be a graceful concession to the entreaties of a very large proportion of the most respectable inhabitants of the town, whereby I anticipate that my influence for good in carrying out improvements will be much increased.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate is to be informed that, with regard to the remission of the penalty, the Court must decline to interfere, except on petition of the party concerned; and as regards the remaining part of the Magistrate's request, the Court likewise will not interfere, as the complete enforcement of the Injunction is a matter of Police, which is within the Magistrate's own discretion.

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POONA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 44 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, C. R. OVANS, on the 3rd June 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 9th and 10th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut by the Acting Session Judge.]

Wilful Murder.

Prisoner.—Gondia bin Krushna Raoot, Pureet, aged 16.

Charge.—Wilful murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, on Saturday the 3rd of May 1856, (Shunwar, Chuitru Wud 14th, Shuké 1778,) in the afternoon, in the limits of the village of Amblay, in the Poorundhur Talooka, in the Zillah of Poona, purposely, and without justifiable or extenuating

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Wilful Murder.

C. M. Harrison, Acting Session Judge.

cause, killed Rahee kom Nagoo Pureet, aged ten years, his sister, by striking her on the forehead, mouth, and ribs with stones, so that she, the said Rahee, then and there died.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder, and pleads not guilty.

The deceased, a girl ten years of age, was his sister (illegitimate), and it appears that on the day and date specified in the indictment (the 3rd of May last), they were left in his father's house alone. What there took place is not known; but at noon he was seen within the limits of the village of Amblay in a state of nudity, assaulting her whilst holding her by the hair, and also when on the ground, with large stones, whereby he caused a fracture of the forehead, nose, and mouth, and a contusion on the ribs, from the effect of which injuries she then and there died.

On searching the prisoner's father's house immediately after this occurrence, the Police Patel (witness No. 7) found a Native blanket spread out upon the ground, with a white 'dhotur' upon it, both in a disordered state, and a pair of drawers lying at some little distance therefrom, and also the pieces of a broken earthen firepot; and, coupling this with the prisoner's state of nakedness when he was seen committing the assault, the only inference that can be drawn is that he attempted incestuous intercourse with his sister Rahee, and, with passions doubly inflamed by resistance, followed her in her flight and murdered her.

But whether this be the case or not, no doubt can be entertained of the prisoner's guilt. He, before the Police Amuldar, on the evening of the day on which the murder was perpetrated, made a full confession, pointing out, when taken to the spot, the stones with which he committed the deed, and subsequently the order in

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POONA.

Wilful Murder.

which each one was thrown; and this confession is proved to have been freely and voluntarily made by the attesting witnesses recorded for the prosecution, Nos. 6 and 7; by the evidence of three eye-witnesses, Luxoomon, Junaee, and Bagoo (Nos. 4, 5, and 9), who depose to having seen the prisoner in the state above described, and in the act of committing the murder; and by the evident stains of blood on the three stones pointed out by the prisoner himself as those with which he murdered his sister.

Beyond the bare assertion that he was not in his proper senses at the time, the prisoner makes no defence; and as this is completely refuted by his proceedings subsequent to the commission of the crime with which he stands charged, as described by the Police Patel and Mhar, by whom he was apprehended, he is convicted of murder; in having, on Saturday, the 3rd of May 1856, (Shunwar, Chuitru Wud 14th, Shuké 1778,) in the afternoon, in the limits of the village of Amblay, in the Poorundhur Talooka, in the Zillah of Poona, purposely, and without justifiable or extenuating cause, killed Rahee kom Nagoo Pureet, aged ten years, his sister, by striking her on the forehead, mouth, and ribs with stones, so that she, the said Rahee, then and there died.

And after maturely considering the nature of the offence committed, and the punishment provided for the same by Clause 1st, Section XXVI. Regulation XIV. of 1827, the following sentence is passed:—

That you, Gondia bin Krushna Raoot, be hanged by the neck until you be dead, at the usual place of execution. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

Letter from the Acting Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to hand up, for the confirmation of the Judges of the

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Wilful Murder.

Sudder Foujdaree Adawlut, a counterpart of my proceedings held in the case of the prisoner Gondia bin Krushna, convicted of murder, and sentenced to be hanged by the neck until he be dead, at the usual place of execution.

I request you will inform the Judges that, hearing the prisoner had been in hospital since his arrival at Poona, I wrote to Dr. Keith, the Civil Surgeon, to ascertain the nature of the complaint from which he had been suffering, and also whether he had been delirious; and the following is a verbatim copy of his reply:—

"I remember the lad, Gondia bin Krushna, well; he was for some time in hospital from intermittent fever, but of a mild description. He had, I believe, fever before his admission, but, if that was of the same degree as what he had when under my charge, it would not, in my opinion, have produced delirium to any extent. He was not reduced to such an extent as to lead me to suppose that he could have suffered before admission from any serious illness."

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.*

* This sentence was afterwards commuted to transportation for life by Government.

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Present, { WILLIAM EDWARD FRERE, / WILLIAM HENRY HARRISON, } Puisne Judges. 1856 July 23.

RUTNAGHERRY.

[Case of Vitul Narayen and two others. Tried by the Acting Police Amuldar, KRUSTNAJEE WASSOODEW RANADE, on the 23rd April 1855. Reviewed by the Acting Session Judge, H. P. ST. G. TUCKER, on the 17th May 1856. Proceedings submitted for the final decision of the Sudder Foujdaree Adawlut, by the Acting Session Judge.]

Prisoners.—No. 1, Vitul Narayen, Gowud Brahmin, aged 52. Theft.
2, Babjee bin Sabajee, Muratha, aged 30.
3, Rughoonath Vitul, Gowud Brahmin, aged 22.

Charge.—Theft (Regulation XIV. of 1827, Section XXXIX.); in having, on Tuesday, the 10th April 1855, (corresponding with Mitee Chuitru Wud 8th, Shuké 1777,) at about 9 A. M., at Vingorla, Talooka Malwan, removed eight stones from the Chowree situated on the east of Vingorla, on the south side of the temple there, valued at Rs. 4.

Both prisoners plead not guilty.

Krustnajee Wassoodew Ranadé, Acting Police Amuldar.

Finding and Sentence by the Acting Police Amuldar, reviewed by the First Assistant Magistrate.—The Acting Police Amuldar is of opinion, from the evidence adduced, that the existence of a Chowree has been established, and the Police, on inspecting the spot, observed an old foundation, and the prisoners admit having removed the stones. They are found guilty of the charge; and prisoner No. 1 (Vitul Narayen) is sentenced to pay a fine of twelve (12) rupees, or suffer twenty (20) days' imprisonment; and his son, prisoner No. 3 (Appa Rughoonath Vitul), to pay a fine of eight (8) rupees, or suffer sixteen (16) days' imprisonment.

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Theft.

The other prisoner (No. 2) being a labourer, and employed by prisoners Nos. 1 and 3, is discharged.

* * * * * * *

The First Assistant Magistrate found that they had no right to remove the stones of the Chowree, but, as they appeared to have done so because they belonged to an old building, and were no one's property, he reduced the fines to Rs. 4 and 3 respectively.

Confirmed by the Officiating Magistrate on 15th October 1855.

H. P. St. G. Tucker, Acting Session Judge.

Proceedings by the Acting Session Judge.—The petitioner is charged, under Regulation XIV. Section XXXIX., with theft, in having removed some stones, valued at about two rupees, from what is described as the remains of a Chowree standing near the temple of Poemar at Vingorla.

The District Police Officer (Mahalkuree) convicted the petitioner, and fined him eight, and his father twelve rupees, or in default to be imprisoned, the former for sixteen days, and the latter twenty days.

The Assistant Magistrate, Mr. Scott, reduced the fines to three rupees and four rupees respectively, and this mitigated sentence was confirmed by the Acting Magistrate, Mr. Goldfinch.

The evidence, if admitted to be true, only establishes that the petitioner and his father removed some stones from the remains of an old platform that were opposite his house, the ownership in which was claimed by no one. The District Police Officer and Assistant Magistrate both admit in their judgments that the said stones did not belong to any person in particular, nor is it asserted that they are the property of the village or Government. Under these circumstances, I cannot consider their removal to be an act of theft, and I therefore hold that the conviction is erroneous, and should be annulled.

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RUTNAGHERRY.

Theft.

Under this view, I submit the case for the final decision of the Sudder Foujdaree Adawlut.

Precept issued by the Sudder Foujdaree Adawlut to the Acting Session Judge.—The sentence having been passed by an Assistant Magistrate, the Session Judge ought to have referred the case to the Magistrate before sending it to the Court, and this course he must now adopt.

Return by the Acting Session Judge to the Precept of the Sudder Foujdaree Adawlut.—In acknowledging the receipt of this Precept, and the extract from the Sudder Court's proceedings which accompanied it, the Acting Judge has the honour to point out that the award of the First Assistant Magistrate was confirmed in appeal by the Acting Magistrate, Mr. Goldfinch, and that that gentleman's successor has now no power to alter the previous decision, though he might not concur in it. Moreover, at the present moment, the Officer in charge of the Magistrate's duties at Rutnagherry is the same Assistant Magistrate who passed the decision complained of.

Under these circumstances, the papers and proceedings are returned to the Court of Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—It appears to the Court to be clear enough that the stones form part of a Chowree built by general subscription. Petitioner does not claim them as his own; and as forcibly or secretly taking away property so as to deprive the owner of it is robbery, and robbery, when the amount is small, or there is a want of care in securing the property, becomes theft, the Court think the petitioner has been rightly convicted of theft, and they will not interfere.

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TANNA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 51 of the Calendar of the Tanna Sessions Court for 1856. Committed by the First Assistant Magistrate, H. B. BOSWELL, on the 13th June 1856. Tried by the Acting Session Judge, H. P. ST. G. TUCKER, on the 25th and 26th June 1856. Proceedings submitted for confirmation by the Acting Session Judge.]

Murder.

Prisoner.—Alia, Son of Jow Gostia Tilleree, Koonbee, aged 38.

Charge.—Murder (Regulation XIV. Section XXVI. Clause 1st, of 1827); in that, on or about the 4th June 1856, (Mitee Jesht Shood 2nd, Shuké 1778,) at the village of Talowlee, Péta Shirul, Talooka Bhewndy, Tanna Division of Zillah Konkun, he did strike his wife, named Puddee Bhangee, with a stick, or some other heavy weapon, on the right arm, and break it, and did beat or kick her on other parts of the person, and did thereby cause her death in the course of the same day.

Prisoner pleads not guilty.

H. P. St. G. Tucker, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with the murder of his wife Puddee, a woman of twenty. It is clearly established that the death of this woman was caused by blows or kicks which she had received on her arms and chest (by one of which the right arm was fractured), and that she herself said it was the prisoner, her husband, who had thus treated her. There was but one eye-witness to the assault, and that was a child of six, who on account of his tender years has not been examined; but the witness No. 6 heard the prisoner call his wife out, and very soon afterwards heard her screaming that she was beaten; and the witness No. 5, the prisoner's cousin and master, found the woman screaming on the ground, and the prisoner standing a few paces distant, and on the wife pointing out the injuries she had suffered, he at once reproached and struck the prisoner for his brutality. It is further established

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TANNA.

Murder.

that after his wife's death the prisoner absconded, and did not return to the village for a week, and that, when arrested, he admitted that he had beaten and caused her death, but declared that he had not intended to do this. It is proved also that he voluntarily made a similar confession to the Mahalkuree when taken before that Officer, and that he pointed out a stick (the smaller one in Court) as the weapon with which he had beaten her. The witnesses for the prosecution have given their evidence in a very satisfactory manner, and have evidently been actuated by friendly and not inimical feelings to the prisoner. The prisoner's only defence is that he did not beat his wife, and that she died of asthma. He has not attempted to establish the latter fact, and it is quite clear such was not the case. I give full credence to the evidence of the witnesses for the prosecution, and it clearly establishes that the prisoner did commit a brutal assault on his wife, whereby he caused her death in a few hours. The provocation alleged by the prisoner, when he confessed the act of killing, was of the slightest kind: he had told his wife to take some grain which was stored outside the house and place it inside. Instead of doing this at once, she proceeded to prepare a small portion of this grain for her own eating, and while thus employed fowls had caused some damage to the grain outside. For this neglect the prisoner beat her so savagely that he broke one arm and bruised the other in two places, and inflicted very severe bruises on her side and chest. In judging of the act, intention, and cause, I regret to state that I can see nothing sufficiently extenuating in the prisoner's conduct to divest it of the criminality which attaches to murder. I therefore convict him of that crime, as set forth in the charge on which he has been arraigned.

The prisoner, Alia bin Jow Gostia, having been convicted of murder, is sentenced, subject to the confirmation

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TANNA.

Murder.

of the Sudder Foujdaree Adawlut, to be transported for life. (Regulation XIV. Section XXVI. Clause 4th, of 1827.)

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

The Session Judge has recorded a great deal of hearsay as evidence, which he should not have done; nor should he have read the prisoner's confession before it was proved.

The Assistant Magistrate ought, when committing a prisoner, to detail the charge on which he is committed, not say "committed on the charge preferred against him." He does not record in English that the prisoner has been asked whether he has any witnesses to call for his defence before the Sessions Court.

1856 July 23.

POONA.

Present, WILLIAM HENRY HARRISON, ROBERT KEAYS, Puisne Judges.

[Case No. 34 of the Calendar of the Poona Sessions Court for 1856. Committed by the Deputy Magistrate, NANA MOROJEE, on the 6th May 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 15th May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner Gungaram bin Sheolal Tewaree.]

Conspiracy.

Prisoners.—No. 1, Lukmundas bin Khooshaldas, Wanee, aged 38.

2, Gungaram bin Sheolal Tewaree, Brahmin, aged 36.

Charge.—Conspiracy (Regulation XVII. of 1828, Section I.); in that, under date Tuesday, the 23rd May 1854, (corresponding with Mungulwar, Wuishuk Wud 12th, Shuké 1776,) in the city of Poona, they combined together to obstruct the course of justice, and to injure one Gunga kom Hurjeetsing, by evading a process of attachment of a Civil Court, which the said Gunga purposed to have issued on the property of

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POONA.

Conspiracy.

Gungaram (prisoner No. 2), acting their respective parts as set forth underneath, viz:—

No. 1 (Lukmundas) attested a false document, termed a 'bechun putru,' on a stamp of one rupee, under the aforesaid date, purporting to have been passed by prisoner No. 2 (Gungaram) to one Luxoomeebaee, mother and guardian of Gowreeshunkur Heemanchul, a minor, disposing to her a horse for Rs. 150, knowing that no such transaction took place, and that the document was intended merely to avert Gunga's process, and in order to give to the transaction therein recorded the appearance of a *bonâ fide* transaction.

No. 2 (Gungaram) instigated the foregoing prisoner to act his part, with the view of defrauding the aforesaid Gunga.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoners are charged with conspiracy, and plead both of them guilty.

They admit, prisoner No. 2 (Gungaram) having passed a fictitious deed of sale to one Luxoomeebaee, in order to save a horse from an attachment before judgment, which was apprehended; and prisoner No. 1 (Lukmundas) having assisted by attesting the said fictitious deed, knowing it to be such; and they are therefore convicted on their own confessions, confirmed after hearing the evidence in the case (which, if admitted to be true, would prove the charge) read over to them, of conspiracy; in having, under date Tuesday, the 23rd May 1854, (corresponding with Mungulwar, Wuishuk Wud 12th, Shuké 1776,) in the city of Poona, combined together to obstruct the course of justice, and to injure one Gunga kom Hurjeetsing, by evading a process of attachment of a Civil Court, which the said Gunga purposed to have issued on the property of Gungaram (prisoner No. 2).

Fraudulent transactions of this nature are very common in this place (Poona), and it is necessary, therefore, that

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Conspiracy.

severe punishment should be inflicted. After maturely considering, therefore, the nature of the offence committed, and the punishment provided for the same by Section II. Regulation XVII. of 1828, the following sentence is passed:—

That you, Lukmundas bin Khooshaldas, be imprisoned for six (6) months with hard labour, and pay a fine of one hundred (100) rupees, or be further imprisoned with hard labour for six (6) months; and that you, Gungaram bin Sheolal, be imprisoned for one (1) year with hard labour, and pay a fine of two hundred (200) rupees, or be further imprisoned with hard labour for one (1) year.

R. Keays, Puisne Judge.

In the Sudder Foujdaree Adawlut.—To obstruct the course of justice, and injure one Gunga, by evading a process of attachment which she purposed to have issued on the property of prisoner Gungaram, Lukmundas attested a false deed of sale disposing to one Luxoomeebaee a horse, the property of prisoner Gungaram for Rs. 150, well knowing that the transaction was a fictitious one, and that the document was intended merely to avert Gunga's process. Prisoner No. 2 (Gungaram) instigated prisoner Lukmundas to commit the above offence.—Plea guilty.

This case was sent for on a petition of appeal from the prisoner Gungaram, and the only question which arises is, whether the offence with which he is charged constitutes the crime of "conspiracy."

He was indebted to the prosecutrix, Gunga, who filed a suit against him, and applied for execution before judgment, begging that an attachment should be placed on the prisoner's horse.

To prevent the sale of the animal to satisfy Gunga's debt, he combined with the prisoner Lukmundas and and one Luxoomeebaee (since absconded), and with their assistance and connivance executed a fictitious deed of

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sale to her, and making over the horse to her. I consider that this certainly is an attempt to defeat the ends of justice by fraudulent purposes, and therefore, as he admits combination with others, the crime of conspiracy is proved, and knowing, as I do, how very often these frauds are resorted to in Poona, I am unwilling to interfere with the sentence.

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POONA.

Conspiracy.

Resolution of the Sudder Foujdaree Adawlut.—Petition rejected.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

1856 July 23.

TANNA.

[Case No. 9 of the Criminal Return of the Magistrate for May 1856. Tried by the Assistant Magistrate, H. B. BOSWELL, on the 13th May 1856. Reviewed by the Magistrate, E. C. JONES, on the 20th May 1856. Proceedings certified, on the requisition of the Sudder Foujdaree Adawlut.]

Prisoners.—No. 1, Narayen bin Bhugwuntjee, Gowlee, aged 30, and twenty others.

Serious Assault.

Charge.—Serious assault (Regulation XIV. of 1827, Section XXIX. Clause 1st); in having, on the 21st April 1856, (corresponding to Mitee Chuitru Wud 1st, Shuké 1778,) in the village Damunee, Péta Kolapoor, Talooka Nusrapoor, Zillah Tanna, attacked complainant Koodabux wulud Allahbux, saying he was a child-stealer, and together beaten, kicked, and knocked him, inflicting several wounds and bruises on various parts of his body, and also pelted him with stones, notwithstanding the Patel of the village was present and interposed to prevent them.

Prisoners all and each plead not guilty.

Finding and Sentence by the Assistant Magistrate.—In this case, as in most similar ones lately disposed of by the Assistant Magistrate, the marks on complainant's person sufficiently attest the truth of his story in the

H. B. Boswell, Assistant Magistrate.

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TANNA.

Serious Assault.

main facts. A cut near his left eye shows how narrowly he escaped losing it altogether, while his hand, back, and legs have numerous marks of blows. The question, then, is, who inflicted these wounds? On this point the mode in which the prisoners were identified is most unsatisfactory. The Patel mentioned certain of his villagers by name, and such of them as were not present were summoned and confronted with complainant, who identified them, as it seems, all in a lump. The town of Damunee being close to the Kutcheree (only half a koss off), certainly the Joint Police Amuldar should have gone with complainant to the village, and there allowed him himself to point out the men. This not having been done, little reliance can be placed on the mere identification of the prisoners by complainant, which may be little more than an echo of the Patel's statement, except where complainant can particularise as to what each did. This in the case of prisoners Nos. 1, 14, and 21, he does most distinctly and minutely, and has repeated his statement with an accuracy and readiness that makes it worthy of all credit; while, if he merely wished to get prisoners punished, regardless of truth, he would have had no difficulty in making up statements of a similar nature against the other prisoners. Prisoner No. 1 denies the charge; but in admitting he saw the row, and yet denying he can identify any of those present, as good as admits his own fault. He has called several witnesses, but they prove nothing; and, in fact, his own statement has left him little ground to stand upon on which to call for evidence. Prisoner No. 14 denies he was present, and says when he came home the people had gone off to the Kutcheree with the complainant; while the witness he has called admits he arrived just as they were leaving the village, which was probably but a few minutes after the assault took place; and this witness has a motive for denying he came in

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Serious Assault.

time to witness the assault, as in so doing he would have implicated himself, or had to give evidence against others. The witness called by this prisoner also shows prisoner No. 1 was then there. Prisoner No. 21 likewise tries to prove an *alibi*; but his witnesses do not quite agree, and such evidence is so easily got up, that in the face of the evidence against him the Assistant Magistrate cannot place reliance on his plea. Other evidence in his case might no doubt be found to show he was not absent from his village the night before; but the Assistant Magistrate is satisfied from what already exists. Prisoners Nos. 2, 4, and 8 deny the charge; but from the evidence against them, connected with their own statements, there can be no doubt they are guilty. The standing within sight and hearing, and then neither helping the Patel nor observing who were the offenders, would in itself make them abettors; and, if such, there is no reason to doubt that, as stated by the complainant and Patel, they joined in the assault, though less actively than the other three. Prisoner No. 8 calls for witnesses, but they could do him no good, and were not at first mentioned. Of the other prisoners, the Assistant Magistrate does not feel satisfied that they are guilty of the charge preferred against them, though a strong suspicion exists against them.

On the above consideration, the Assistant Magistrate convicts prisoners Nos. 1, 2, 4, 8, 14, and 21 of the charge preferred against them, and does sentence prisoner No. 1 (Narayen bin Bhugwuntjee) to suffer three (3) months' imprisonment with hard labour; on release to pay a fine of fifty (50) rupees; in default, to suffer another month's imprisonment with hard labour. Prisoners No. 2 (Gunnoo bin Gopaljee), No. 4 (Mad Patel bin Govind Patel), and No. 8 (Morshet bin Appashet), to pay each a fine of ten (10) rupees; in default, to suffer each fifteen (15) days' imprisonment with hard labour. Prisoners No.

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14 (Govinda bin Vitojee), and No. 21 (Baloo bin Mhadoo), to suffer each one (1) month's solitary confinement; on release to pay each a fine of ten (10) rupees; in default, to suffer each one (1) month's imprisonment with hard labour.

In the event of the fines, or any part of them, being paid, the Assistant Magistrate directs that Rs. 12, or such sum not exceeding Rs. 12, as is paid, shall be paid to complainant, as compensation for any losses he has sustained, and for the injuries he has received, and the expense he has been put to.

Prisoners Nos. 3, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, and 20 are discharged for want of proof.

Reviewed by the Magistrate.—The prisoners Nos. 1, 14, and 21 in this case having appealed against the decision passed against them, the Magistrate, on perusal of the papers and proceedings, sees no reason whatever to alter the conviction, which is accordingly confirmed; but with regard to the sentence awarded to Narayen bin Bhugwuntjee (prisoner No. 1), the Magistrate considers that a person of his respectability will be sufficiently punished by having to undergo the degradation of being sent to prison, and that there is no necessity to sentence him to hard labour; so much, therefore, of the sentence, as condemns prisoner No. 1 to suffer hard labour, is cancelled, and he is ordered to be imprisoned without hard labour, both as the original punishment and the period in default of payment of fine.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause to interfere.

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1856 July 23.

AHMEDABAD.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Notice issued by the Magistrate of Ahmedabad, J. W. HADOW; and referred by that Officer to the Sudder Foujdaree Adawlut, on the 24th June 1856.]

Notice by the Magistrate.

Notice.—Notice is hereby given, to all who are residing in the Bhudder Division, that no one should erect any house on the waste lands situated in this quarter of the city, or repair any building, without previously obtaining the permission of the Government Authorities. Should any person or persons act contrary to this Injunction, he will be dealt with according to the Regulations.—Dated 1st February 1849.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the approval of the Judges, the enclosed translation of a Notice, bearing date 1st February 1849, issued by Mr. Fawcett, prohibiting, with a view to the convenience of those inhabiting the Government buildings, and the safety of the Government buildings, Kutcheree, Adawlut, Jail, &c. from fire, the erection of any house, or repairs to old houses or buildings, without previously obtaining the permission of the Government Authorities.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—With reference to your letter dated the 24th June 1856, No. 482, enclosing translation of a Notice bearing date the 1st February 1849, issued by Mr. Fawcett, you are hereby requested to certify copy of the original Notice.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—Copy of the original Notice is herewith certified to the Court of Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—Recorded.

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July 23.

BELGAUM.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 130 of the Calendar of the Dharwar Sessions Court for 1855. Committed by the Second Assistant Magistrate of Belgaum, C. SHAW, on the 28th September 1855. Tried by the Session Judge, A. W. JONES, on the 15th, 16th, 19th, 22nd, and 23rd November 1855. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Gang Robbery, with Force, by Night.

Prisoner.—Bungaree bin Kenchapa, Lingayet, aged 45.

[See pages 322 to 326, Vol. V., for previous proceedings in this case.]

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—You are hereby requested to expedite your return to the Court's Precept of the 27th February 1856, No. 213, desiring you to furnish certain information in the case of Bungaree bin Kenchapa.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—In return to the within Precept, it is hereby certified to the Sudder Foujdaree Adawlut that the extract from the Court's proceedings, and petition which accompanied it, have been duly received, and the latter delivered to the prisoner. The Session Judge has ascertained from the Belgaum Magistrate that the reward was offered for the apprehension and conviction of prisoner Bungaree, and that it has not yet been paid, and the Magistrate was also requested to furnish information as to whether there was any trace of an order by Mr. Forjett to Sewbusapa Arleekutee authorising him to call for assistance in the capture of Bungaree; but the Superintendent of Police, being out in the Districts, could not give any information on this point, and in the mean time a third person, a resident of Hooblee, came forward with a claim to share in the reward. As this person's name was mentioned by

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BELGAUM.

Gang Robbery, with Force, by Night.

Chunmulapa in his first deposition, but not in that of any of the other persons concerned in the apprehension of Bungaree, the Session Judge thought it right to send for and examine every one concerned; but although a summons was twice issued, and directions given to bring in Chunmulapa for this purpose, it has been impossible to find him anywhere, and as it seems there is a writ out against him, there appears to be little chance now of his being found. The person who has come forward to claim a share of this reward, and whose name is Chunverya, was undoubtedly with the prisoner when he was arrested; this is proved by the evidence of all the parties concerned. He says that Chunmulapa told him of the reward for Bungaree, and that he pointed him out in Hooblee, and kept the secret till Chunmulapa returned to Hooblee with help, &c. and that he then contrived to bring him to the place where this Bungaree was actually seized, and that he himself helped in seizing him.

Bungaree, when examined, corroborated this story, and declared that Chunverya had seized him before the Patel and his attendants came in; but the Session Judge observed that in Bungaree's confession he says he entrusted Chunverya with 200 rupees' worth of the property he had got in the Akeewat robbery, because he had lived with him two or three years in his Mhut; and the fact of his having lived with him for about this time is admitted by Chunverya. At first sight it would appear as if the charge of having placed this money with Chunverya would rather confirm the fact of his having been instrumental in seizing him, as Bungaree would be likely to tell anything that would implicate a man who had betrayed him; but when Bungaree now comes forward and declares that he did not entrust him with anything, but that the Patel (who undoubtedly originated his arrest) took Rs. 100 from him, and

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1856 July 23. — BELGAUM. — Gang Robbery, with Force, by Night.

that Chunverya was the person who seized him, the Session Judge cannot but think the object of this change of story evident, and that it is done to serve a friend ; and considering, therefore, that the persons who were the real cause of the arrest of Bungaree, and took the trouble to leave their own village and came to Hooblee for that purpose, were Sewbusapa, Patel of Arleekutee, and Chunmulapa, the Session Judge adjudges the reward to them.

Resolution of the Sudder Foujdaree Adawlut.—Recorded.

1856 July 23. — BROACH. — Murder.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 1 of the Calendar of the Broach Sessions Court for 1856. Committed by the Assistant Magistrate, J. G. WHITE, on the 15th January 1856. Tried by the Session Judge, H. HEBBERT, on the 26th May 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Prisoner.—Amba, Wife of Tikum Nuthoo, Mochee, aged 18.

[See pages 818 to 824, Vol. V., for previous proceedings in this case.]

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—Herewith you will receive warrant for carrying the sentence of Amba, wife of Tikum Nuthoo, into execution, in Case No. 1 of the Broach Circuit General Calendar of 1856, together with an extract from the Court's proceedings of this day's date for your information and guidance.

Petition certified by you on the 9th instant is herewith returned, with order endorsed on it, for the purpose of being delivered to the prisoner.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—It is hereby certified to

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Broach.

Murder.

the Sudder Foujdaree Adawlut that the warrant and extract of proceedings which accompanied this Precept have been duly received, and that copy of the latter has been forwarded to the Magistrate of Broach, in modification of the remarks made by the Session Judge to him, in connection with the case in question. At the same time, the Session Judge takes the opportunity to observe that he was led to make those remarks from a consideration that Regulation XIII. of 1827, Section XXXVIII. Clause 2nd, militated against the Civil Surgeon's report in question being recorded as evidence against the prisoner.

Resolution of the Sudder Foujdaree Adawlut.—The Session Judge is to be informed that he was right in his supposition, if it was that the Civil Surgeon's report could not be recorded as evidence on the trial before the Session Judge; but, as there is nothing in the Regulations to oblige the Magistrate, in a case he does not intend to decide himself, to examine the Civil Surgeon, and as, for the reasons mentioned in the Court's proceedings of the 26th ultimo, it is better dispensed with, he was not right in communicating the remarks he did on the trial to the Magistrate.

Present, { William Edward Frere, Robert Keays, } Puisne Judges.

1856 July 23.

Ahmednuggur.

[Case No. 89 of the Calendar of the Ahmednuggur Sessions Court for 1855. Committed by the Acting Second Assistant Magistrate, J. L. Warden, on the 20th November 1855. Tried by the Session Judge, J. W. Woodcock, on the 12th, 13th, 17th, and 20th December 1855. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Conspiracy.

Prisoners.—No. 1, Krishna wulud Khundoo, Mhar, aged 32.

2, Mhyputee wulud Keyroo, Mhar, aged 35.

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AHMEDNUGGUR.

Conspiracy.

[See pages 730 to 748, Vol. V., for previous proceedings in this case.]

Memorandum by the Assistant Superintendent of Police.—The Assistant Superintendent of Police begs to state, in reference to the extract from the Court's proceedings, that when he was Acting Superintendent of Police, the prisoner Krishna wulud Khundoo, Mhar, informed him that Seetaram Punt and others, of the village of Toka, murdered a person named Tatia Deo, and concealed his property; and that a woman named Anaee,* then living in the Poona Zillah, was aware of the fact, as she had received a share of this booty.

The Acting Superintendent of Police, having thought it necessary to take the evidence of the said woman, directed the prisoner to accompany the witness in order to point out the woman and the property. At the same time he gave an order to the witness only to the effect that *he should bring the woman in question, with the property if found with her.*

On the arrival of the woman, her deposition was taken before the Acting Superintendent of Police, and she, together with the prisoner Krishna Mhar, and other persons, were handed over to the Police Amuldar of Newassa for preliminary investigation. That Officer afterwards reported that the statement of the prisoner Krishna was false, as the woman in question denied her deposition given before the Acting Superintendent of Police, and declared that she was persuaded by the said prisoner to give false evidence.

The Acting Superintendent of Police then desired the Police Amuldar to prepare a case of conspiracy against the prisoner Krishna Mhar, and forward it to the Assistant Magistrate in charge of the Talooka, who, after investigating it, committed the prisoner Krishna wulud

* Not Thumao, as mentioned in Gyanoo's deposition.

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Khundoo to the Sessions Court, where he was convicted and sentenced. 1856 July 23.

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Under these circumstances, the Assistant Superintendent of Police believes that he did not act any more as a Magistrate than his ordinary functions as Superintendent of Police required him to do. He regrets the delay in forwarding this reply, which was owing to a reference which had to be made to Ahmednuggur.

Return by the Magistrate to a Precept of the Sudder Foujdaree Adawlut.—The explanation from the Assistant Superintendent of Police, Lieutenant Bell, who issued the orders when acting as Superintendent of Police, is forwarded, as required in the extract which accompanied this Precept.

Resolution of the Sudder Foujdaree Adawlut.—The Assistant Superintendent of Police makes no remark upon it, but he cannot have failed to observe the great difference between the orders he gave Gyanoo, and the way in which Gyanoo carried them out; and as the Assistant Superintendent is responsible for the way in which his orders are executed, he will, the Court hope, be careful in future that his Peons fully understand his orders, and will not exceed them.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges. 1856 July 23.

SHOLAPORE.

[Petitions of Yelojee bin Gopaljee to the Sudder Foujdaree Adawlut. Referred to the Session Judge of Sholapore, T. A. COMPTON, for Report.]

[See pages 846 to 848, Vol. V., for previous proceedings in this case.]

Restoration of Property produced in Evidence.

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—The petitioner having been acquitted, no delay ought to have taken place with regard to

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SHOLAPORE.

Restoration of Property produced in Evidence.

giving him possession of the property found in his house, and which was supposed, but not proved, to be stolen.

Return by the Session Judge to the Precept of the Sudder Foujddree Adawlut.—It is hereby certified to the Sudder Foujdaree Adawlut that the extract from the Court's proceedings in the case of Yelojee wulud Gopaljee, dated 26th of June, has been received, and the exigence of the same complied with, by the delivery of the property found in his house to the petitioner.

The property would have been delivered to Yelojee at once had it been in the custody of the Sessions Court; but it was in the house of the complainant, Abajee Raleraskur, who was absent at Akulkote, and on his return from thence, as he refused to restore the lace to Yelojee without an express order on the subject from the Sudder Court, the Session Judge thought it advisable to wait for the receipt of such order, as he was not aware of any Regulation which would authorise his causing Abajee's house to be searched, and the property made over to Yelojee *against Abajee's* consent.

Resolution of the Sudder Foujdaree Adawlut.—Recorded.

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AHMEDABAD.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Petition of Huree Raja and another to the Sudder Foujdaree Adawlut, praying that the Order of the Magistrate of Ahmedabad, J. W. HADOW, imposing Fines upon them, might be annulled. Proceedings certified, on the requisition of the Sudder Foujdaree Adawlut.]

Forfeiture of Security Bond.

Petition of Huree Raja and another to the Sudder Foujdaree Adawlut.—[Praying that an order of the Magistrate of Ahmedabad, imposing fines upon them, might be cancelled.]

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Forfeiture of Security Bond.

W. A. Ritchie, First Assistant Magistrate.

Decision by the Acting First Assistant Magistrate, confirmed by the Magistrate, in the Case of Huree Raja.—Huree Raja, Koonbee, aged 55, occupation cultivation, residence Jeensir, Talooka Dhundooka, Zillah Ahmedabad, is this day brought up, and informed that whereas he, under date May 31st, 1846, entered into a security bond conjointly with Ram Khana, Koonbee (since dead), for and on behalf of the Koonbee community resident in Ankuroo, that proper measures will be taken by them to prevent the occurrence of any offence within the bounds of their village during the period of five years, or that they (Huree and deceased Ram) would forfeit the sum of Rs. 500 conjointly, to be commuted in case of non-payment into imprisonment for two years each: still, on April 8th, 1851, a robbery with force was perpetrated in the village of Ankuroo, and property to the amount of Rs. 500 carried off, in consequence of which the security entered into by Huree Raja and Ram Khana (deceased), Koonbees, became forfeited. Huree Raja, Koonbee, admitting having entered into the security, and also that a robbery with force was perpetrated in the village of Ankuroo within five years from the date of the bond, after hearing his security bond read over to him, the Acting First Assistant Magistrate informs him that, under Regulation XII. Section XXVI. Clause 2nd, of 1827, his security is forfeit, and that he pay Rs. 250, or half of the fine therein stated (Ram Khana being dead), or be imprisoned, in terms of the bond, for two years. Subject to the confirmation of the Acting Magistrate.

W. A. Ritchie, First Assistant Magistrate.

Decision by the Acting First Assistant Magistrate, confirmed by the Magistrate, in the Case of Khoda Mowjee.—Khoda Mowjee, Lohar, aged 45, occupation blacksmith, residence Jeensir, Talooka Dhundooka, Zillah Ahmedabad, is this day brought up, and informed that whereas he, conjointly with Jussa Wusta Sootar,

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aged 60, occupation carpenter, residence as above, did, under date June 3rd, 1846, enter into a security bond for and on behalf of the Lohar, Sootar, and Durjee communities resident in the village of Ankuroo, that proper measures would be taken by them to prevent the occurrence of any offence whatever within the bounds of their village during the period of five years, or that they (Khoda and Jussa) would forfeit the sum of Rs. 200 conjointly, to be commuted in case of nonpayment into imprisonment for two years each; still on April 8th, 1851, a robbery with force was perpetrated in the village of Ankuroo, and property to the amount of Rs. 500 carried off, in consequence of which the security entered into by Khoda Mowjee and Jussa Wusta became forfeited.

Khoda Mowjee and Jussa Wusta admitting having entered into the security, and also that a robbery with force was perpetrated in the village of Ankuroo within five years from the date of the bond, after hearing their security bond read over to them, the Acting First Assistant Magistrate informs them that, under Regulation XII. Section XXVI. Clause 2nd, of 1827, their security is forfeit, and that they pay the fine therein stated, Rs. 200, conjointly, or be imprisoned, in the terms of the bond, for two years each. Subject to the confirmation of the Acting Magistrate.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to certify the papers and proceedings, together with your report upon the matter set forth in the accompanying petition, presented to this Court by Huree Raja and another, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

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Forfeiture of Security Bond.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In certifying to the Court of Sudder Foujdaree Adawlut the papers and proceedings held in the cases of Huree Raja and Jussa Wusta, the Magistrate of Ahmedabad has the honour to state that the former had entered into a security bond for and on behalf of the Koonbee community, and the latter for that of the Lohar, Sootar, and Durjee communities, of the village of Ankuroo, to the effect that proper measures would be taken by them to prevent the occurrence of any offence whatever within the bounds of their village. They having failed to fulfil the terms of their agreement, the security bonds were declared forfeit, and the full penalty ordered to be enforced by the First Assistant Magistrate.

The petition is herewith returned, as requested.

Further Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to inform the Court what was the date of the appeal to which his answer of the 17th December last refers, and also (the robbery having been committed on the 8th April 1851) on what date he called upon the petitioners first to make good the amount.

Further Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In execution of this Precept, the Magistrate of Ahmedabad begs to state that the date of the appeal to which his answer of the 17th December last refers is the 23rd June, and that the petitioners were first called upon on the 12th April 1853 to make good the amount.

The delay in replying to this Precept has been owing to the reference that had been made to the First Assistant Magistrate, calling for the papers and proceedings, which were supposed to have been in his office.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—This Precept is returned to the Magis-

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trate of Ahmedabad for full execution, by his certifying the papers and proceedings, as requested in the 2nd paragraph.

Return of the Magistrate.—The papers and proceedings alluded to in the within Precept are herewith returned to the Court of Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—The petitioners, Huree and Jussa, on the 31st May and 3rd June 1846, respectively entered into security bonds to prevent, for five years, the occurrence of any offence in the village of Ankuroo. On the 8th April 1851 a robbery with force was committed in that village, and on the 12th April 1853 the Magistrate called upon the petitioners to make good the loss. Now, seeing that the term of five years expired on the 31st May and 3rd June 1851, and that the securities were never called upon to pay the money until two years after the robbery was committed, and nearly two years after the security bonds had expired, the Court do not think the Magistrate was justified in enforcing them. The security is not released from responsibility the very day that the time for which he is bail expires; a reasonable time must be allowed to the Magistrate to ascertain whether within the last few days for which he was bound any forfeiture was incurred; but the Court cannot look upon two years as a reasonable time at all, and two years having elapsed since the bonds were forfeited, and one year and eleven months since the bonds themselves expired, they reverse the Assistant Magistrate's orders, and remit the penalties.

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TANNA.

Present, William Edward Frere, William Henry Harrison, Robert Keays, Puisne Judges.

[Case No. 18 of the Criminal Return of the Magistrate of Tanna for May 1856. Tried by the Assistant Magistrate, R. W. Hunter, on the 3rd May 1856. Proceedings certified, on the requisition of the Sudder Foujdaree Adawlut.]

Instigating a Native Officer to commit Bribery.

Prisoner.—Nicolao wulud Antonio, Christian, aged 75.

Charge.—Instigating a Native Officer to commit bribery (Regulation XII. Section VIII. Clause 1st, and Regulation XIV. Section I. Clause 5th, of 1827); in that he did, at 7·30 P. M. on the 17th January 1856, (Mitee Poush Shood 10th, Shuké 1777,) whilst being conveyed by the complainant, Hunmunta Balajee, and another Police Sepoy, from a liquor shop in Moujé Malawunee, Talooka Salsette, Zillah Tanna, to the Police Station at Malad, Talooka Salsette, give into the hands of the complainant, Hunmunta, the sum of six annas by way of a bribe, in order to induce him to conceal the fact that the liquor shop at Malawunee was open after sunset, and that he (the prisoner) had been found drinking liquor there at that time.

R. W. Hunter, Assistant Magistrate.

Finding and Sentence by the Assistant Magistrate.—The prisoner pleads guilty to the charge, but states that it was Luxoomun to whom he gave the money and not to the complainant, whilst both complainant and Luxoomun state that the bribe was offered to the former. It is most probable that prisoner has made the mistake, as he owns he cannot see well at night.

Prisoner says in defence that he was asked for the money. The subsequent delivery up of the money by the Police Sepoy does not testify to the probability of this.

From the prisoner's confession, and the evidence recorded, the prisoner's guilt is fully established.

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The prisoner is an old, infirm man, and was apprehended, not for the commission of any crime, but for the purpose of bearing testimony against the liquor-seller for keeping his shop open after sunset. His only object, therefore, could have been to save himself the long walk of three and a half miles from Malawunee to Malad. Moreover, this crime was committed not many days after the Sudder Foujdaree Adawlut's Circular Order dated 11th December 1855, No. 2920 of 1855, was issued for the cancellation of a prior Order (No. 25, printed collection), which declared that the offer of a bribe was not to be dealt with as a penal offence.

The prisoner is convicted of the charge brought against him ; but, under the abovementioned extenuating circumstances, almost a mere nominal punishment will suffice. The prisoner is sentenced to pay a fine of eight (8) annas, or, in default of payment, to suffer two (2) days' imprisonment without labour. (Regulation XII. Section VIII. Clause 1st, and Regulation XIV. Section I. Clause 5th, of 1827.)

Extract paragraph 4 *of a letter from the Registrar Sudder Foujdaree Adawlut to the Magistrate.*—In Case No. 18 the accused is charged with instigating Policemen to receive a bribe. The Court would have been glad had it been shown what the instigation was, and whether the party instigated did receive the bribe or not. They desire me to request that you will have the goodness to review the case and report the result.

Reply of the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—With reference to your 4th paragraph I have the honour to state, for the information of the Judges of the Sudder Foujdaree Adawlut, that I have reviewed the Case No. 18 of my Monthly Criminal Return for May last, and I see no cause for altering the decision passed by the Assistant Magistrate. The instigation to bribery consisted in the accused having given

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the Policeman six annas, in order to induce him to conceal the fact that a certain liquor shop at Malawunee was open after sunset, and that he (the prisoner) had been found drinking liquor there at that time. The prosecutor was the person to whom the money had been given.

Letter from the Registrar of the Sudder Foujdaree Adawlut to the Magistrate.—I have the honour, by direction of the Judges of the Sudder Foujdaree Adawlut, to acknowledge the receipt of your letter No. 1189, dated 16th instant, relative to certain cases of your Criminal Return for May last, and to request that you will have the goodness to certify the proceedings held in Case No. 18.

Reply from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—In reply to your letter No. 1729, dated 23rd instant, I have the honour to certify the proceedings held in Case No. 18 of my Criminal Return for May last, as called for.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The prisoner in this case was fined eight annas for giving a Policeman, who had abused his authority by arresting him because he wanted him as a witness, six annas for his release from his illegal durance. It does not appear that the Policeman was punished for his double misconduct, but the accused was found guilty of instigating to bribery. Such an application of the law cannot possibly stand, and the sentence must be annulled.

This prosecution seems the result of misunderstanding the effect of the Court's Circular Order No. 2920, dated 11th December 1855, to the issue of which I was opposed, in the belief it would mislead, as it has done. It should now go forth that the Circular Order alluded to does not and cannot make that penal which was not penal before, and that its only effect is to withdraw the publication of

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an interpretation, the force of which is not diminished by it; and that, as there was no general law (when the construction was declared) in 1828 for punishing the offer or gift of a bribe, so there is none now; and that it is only as part of a conspiracy to defeat the ends of justice, or when so involved in specified crimes, or where specified by particular enactment as a crime itself, that such an act is penal.

Resolution of the Sudder Foujdaree Adawlut.—From these proceedings it appears to the Court that some Peons, with an excess of zeal, took Nicolao, whom they wanted as a witness, prisoner, and that he gave them six annas to let him go. The Court do not see any instigating in this case to commit bribery. Hunmunta most certainly took a bribe, but it was no offence in Nicolao giving it to him. He gained his object, and Hunmunta ought to have been punished, both for making the man a prisoner, for which there was no occasion unless to extort a bribe from him, and then for taking six annas and letting him go. The conviction and sentence are annulled.

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POONA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 53 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, W. M. COGHLAN, on the 1st July 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 8th and 9th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Acting Session Judge.]

Wilful Murder.

Prisoner.—Ramjee bin Sukojee Kudum, Koonbee, aged 50.

Charge.—Wilful murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in that, on Friday, the 27th day of June 1856, (Shookurwar. Mitee Jesht Wud 10th,

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POONA.

Wilful Murder.

Shuké 1778,) at about 10 o'clock A. M., in his house, in the Aditwar Péta of the city of Poona, he did feloniously, and with malice aforethought, kill his wife Saloo, by striking her several times on the head, back, and arms with a carpenter's axe, so that she did then and there die therefrom.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder, and pleads not guilty.

The prisoner, who is a Putawala in the service of the Superintendent of the Poona and Tanna Revenue Survey, has, it appears, been twice married. He has a daughter, Sukoo, by his former wife, who is dead, and his second wife, Saloo (the deceased), has also a daughter, Baloo, by her former husband. It further appears that the deceased had saved some money, which she suspected Sukoo and the prisoner of having appropriated and made over to the husband of the former, and that this was the cause of a quarrel between her and the prisoner on the night preceding and on the morning of Friday the 27th of June. The deceased's daughter, Baloo, was not present when the assault commenced, but Sukoo, his own daughter, was; and she states that it originated in her step-mother beating her, upon which her father (the prisoner) remonstrated, when she left her and seized him by the 'shendee,' or tuft of hair on the top of the head, and began to beat him with an adze she had in the other hand (in her deposition before the Police and Magisterial Authorities she did not mention that her step-mother had an adze in her other hand, or that she began to beat her father with it); that he took the adze from her, and, as she continued holding his shendee, struck her with it first on the left temple, again on the left arm above the elbow, and again on the back, upon which she let go his hair and fell to the ground. In the meantime Baloo, who had been to fetch water, returned, and she deposes to having seen the prisoner strike her mother

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with the adze on the loins as she was lying with her face on the ground. The deceased seems to have asked her daughter for water, and to have immediately afterwards expired; and the prisoner, having perpetrated the assault, proceeded at once to a Police Chowkee near his house, and gave himself up, informing the Sepoys on guard that he had murdered his wife.

The prisoner before the Police made a full confession, which was taken down in writing, and this he confirmed before the Assistant Magistrate, but has repudiated it before this Court. It is, however, proved to have been freely and voluntarily made, and when he was perfectly sensible and collected, by the attesting witnesses thereto, Nos. 8 and 9; and it is fully corroborated by the evidence of the witnesses Baloo and Sukoo (above referred to), and the Police Sepoys Koosaba and Peerajee, who depose to the prisoner having come to the Chowkee on the morning of the 27th without a turban, and with his 'angurka' torn and stained with blood; to his having told them that he had murdered his wife with an adze; and to their finding her body lying on the ground with wounds on her left arm and head, from which blood was flowing, and an adze stained with blood lying by it.

The prisoner brings forward nothing in his defence tending in any way to relieve him from the charge. He does not directly deny having committed the murder, and by asserting that Baloo was not present he virtually allows that he was so himself.

It cannot be supposed that the deceased's death was the result of an assault perpetrated under the sudden heat of passion; the number and extent of the wounds found on her person (as described in the Inquest Report) and the instrument used forbid such an assumption, and the prisoner must therefore be convicted of murder; in having, on Friday, the 27th day of June 1856, (Shookurwar, Mitee Jesht Wud 10th, Shuké 1778,) at about

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10 o'clock A. M., in his house, in the Aditwar Péta of the city of Poona, feloniously, and with malice aforethought, killed his wife Saloo, by striking her several times on the head, back, and arms with a carpenter's axe, so that she did then and there die therefrom.

And after maturely considering the nature of the offence committed, and the punishment provided for the same by Clause 4th, Section XXVI. Regulation XIV. of 1827, the following sentence is passed :—

That you, Ramjee bin Sukojee Kudum, be hanged by the neck until you be dead, at the usual place of execution at Poona. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The only question in this case is, under what circumstances did Ramjee kill his wife Saloo? Did he take the adze out of her hand, as deposed to by the witness Sukoo before the Sessions Court, while she held him by the topknot, or did he take up the adze during the struggle and kill her? His own account, in his petition to us, that the wounds were self-inflicted, is not credible. For my own part, I incline to the belief that the adze was taken up during the struggle; but as there may be a doubt on the subject, I would give the prisoner the benefit of it in the sentence I would pass, and would mitigate it to transportation; to which I the more readily accede, as we have this day, in a most deliberate and cold-blooded murder from Ahmedabad, been obliged to confirm a sentence of transportation owing to the Session Judge having passed no heavier sentence.

I wish the Session Judge had waited until just before he examined the witness Keshorow (No. 8), before proving and recording the Inquest Report, and I could then have taken no exception to the way in which the evidence was recorded, or to the trial at all, except the Session Judge's having adjourned it to consider his finding, a

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W. H. Harrison, Puisne Judge.

care and delay which I cannot think called for in so very clear a case.

Minute by Mr. Harrison.—In this case it is clearly proved that the prisoner caused the death of his wife by striking her violent blows with an adze; and he has been rightly convicted of murder.

It appears that the crime was committed without premeditation, and was the result of a sudden anger, excited by a quarrel with deceased, in which she seized him by his shendee; and that, as soon as she was struck down, he went himself and reported the matter to the Police. I am of opinion that, under the circumstances, a secondary punishment will meet the ends of justice, and would sentence the prisoner to transportation for life.

Resolution of the Sudder Foujdaree Adawlut.—The conviction is confirmed, and prisoner sentenced to transportation for life.

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AHMEDABAD.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 150 of the Calendar of the Ahmedabad Sessions Court for 1855. Committed by the Third Assistant Magistrate, H. B. LINDSAY, on the 15th December 1855. Tried by the Session Judge, A. B. WARDEN, on the 2nd and 3rd June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Wilful Murder, attended with Robbery by Night, accompanied with Force.

Prisoner.—Tajmahomed Mooradkhan, Mukranee, aged 30.

Charge.—Wilful murder, attended with robbery by night, accompanied with force; in having, on or about Sunday, June 17th, 1855, (corresponding with First Ashad Shood 3rd, Sumvut 1911,) in the night-time, in the limits of Kamulpoor village, Purantej Talooka, Ahmedabad Zillah, wilfully shot Juwere Amerchund, inhabitant of Edur, in the Mahee Kanta, with a gun, so that the said Juwere then and there died; and with

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Wilful Murder, attended with Robbery by Night, accompanied with Force.

A. B. Warden, Session Judge.

having forcibly taken from the persons of Juwere Amerchund and Bahadur Oodeychund, at the above time and place, property valued at Rs. 277; thereby rendering himself amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827, and Section XXXVII. Clause 3rd, of the same Regulation.

The prisoner pleads not guilty.

Finding and Sentence by the Sessions Court.—The Inquest Report (No. 3), which has been proved by the evidence of witnesses Moolchund and Kewul (Nos. 1 and 2), shows that the death of the deceased Juwere Amerchund was caused by a gunshot wound; and as there was one hole in the back and two in the chest, it was evident that the deceased was shot in the back, and that the gun contained two bullets. The next question for decision is, by whom was the deceased shot? The evidence on this point is also clear. From the statement of the witness No. 6 (Bahadur Oodeychund) it is proved that the deceased Juwere, the prisoner, and the said witness were travelling together from Sadra to Edur in single file, the witness in front, the deceased in the middle, and prisoner in the rear with a loaded gun and a lighted match. The witness, hearing a shot fired, turned round, and found that the deceased had fallen from his horse; and on his (witness) asking prisoner what was the matter, prisoner replied that the deceased was dead, and that he (witness) had better be off, or else he should be served in the same manner, but before going away he must deliver up his earrings and money. Witness did as he was ordered. The evidence of the witnesses Jama and Saloojee (Nos. 9 and 10) proves the discovery of the corpse on the spot described by witness No. 6 (Bahadur). The evidence of witness No. 7 (Veneechund), son of the deceased, proves that the deceased left home in company with prisoner and the witness No. 6, and that the former was only taken into his

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father's service the evening before he commenced his journey. This witness has identified the ornaments before the Court as those worn by his father; and the evidence of the abovementioned witness No. 6 proves that the deceased had the identical ornaments about him at the time he was shot, with the exception of a pendant, which, owing to its being broken, the deceased had taken off his neck, and which prisoner had taken charge of. The evidence of the witnesses proves that the ornaments, which have been identified as the property of the deceased, were found in the possession of prisoner, and that their discovery was owing to the prisoner having offered one of them (an ornament not worn by a man of his caste) for sale. Lastly, the evidence of the witness No. 8 (Janmahomed) proves that the prisoner left with him in pledge a gun and loading apparatus, &c. The above evidence is so clear, and establishes beyond all doubt that the deceased was first shot and then robbed by prisoner, that the confession of the prisoner is not needed to bring home the crime to him. The confession appears in the first instance to have been extorted through ill-treatment received at the hands of the officials of the Rao of Kutch, but the evidence of Colonel Trevelyan proves that the prisoner, although complaining of having been ill-used, voluntarily admitted before him that he had shot and robbed the deceased. Before the Police Authorities of this Zillah prisoner retracted his confession, and represented that he had accidentally shot his employer, and accounts for it in the following manner, viz. that he was walking in front of his master with his gun over his shoulder, that he slipped, and the gun went off and wounded his master; but the Inquest Report proves that there was one hole in the back of the deceased whereas there were two in the chest, and which showed that the gun must have been loaded with two bullets and fired from behind: this proves that the above statement

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AHMEDABAD.

Wilful Murder, attended with Robbery by Night, accompanied with Force.

of the prisoner is not true. The prisoner does not appear to have borne any enmity towards the deceased; his sole object in murdering the deceased was to obtain possession of the ornaments worn by the deceased. The Court, upon due consideration of all the circumstances connected with the case, finds the prisoner guilty of wilful murder, attended with robbery by night, accompanied with force; in having, on or about Sunday, June 17th, 1855, (corresponding with First Ashad Shood 3rd, Sumvut 1911,) in the night-time, in the limits of Kamulpoor village, Purantej Talooka, Ahmedabad Zillah, wilfully shot Juwere Amerchund, inhabitant of Edur, in the Mahee Kanta, with a gun, so that the said Juwere then and there died; and with having forcibly taken from the persons of Juwere Amerchund and Bahadur Oodeychund, at the above time and place, property valued at Rs. 277. After taking into consideration the nature of the offence proved against you, prisoner Tajmahomed, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVI. Clause 4th, and Section XXXVII. Clause 3rd, of 1827, the sentence of the Court is, that you be transported beyond seas for the term of your natural life. This sentence is, however, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

The Assistant Magistrate should, at the end of his proceedings, inform the prisoner that he is "committed to take his trial before the Session Judge, charged with murder," or whatever the offence may be; "in having, on the &c." and he should ask him if he has any witnesses to call in his defence, and record his answer.

The Court wish the Session Judge had recorded his reasons for awarding a secondary punishment in this case of cold-blooded and deliberate murder clearly proved.

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1856 July 30.

SURAT.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 18 of the Criminal Return of the Magistrate of Surat for April 1856. Tried by the Deputy Magistrate, W. M. KELLY, on the 30th April 1856. Reviewed by the Magistrate, H. LIDDELL, on the 4th June 1856. Proceedings certified on the requisition of the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Offering for Sale, or Selling Cotton Fraudulently Deteriorated and mixed with Dew.

Prisoner.—Jumnadas Lalbhaee, Vania, aged 35.

Charge.—Offering for sale, or selling cotton fraudulently deteriorated and mixed with dew (Regulation III. of 1829, Section I. Clause 2nd); in having, on Saturday, the 14th Chuitru Shood, Sumvut 1912, (corresponding with 19th April 1856,) brought to the Ducca Bunder, in the city of Surat, a bale of cotton containing Surat maunds 10 and seers 11, fraudulently deteriorated and mixed with dew, and sold it, or offered it for sale.

The prisoner pleads not guilty.

W. M. Kelly, Deputy Magistrate.

Finding and Sentence by the Deputy Magistrate.—It is clearly seen from the evidence in the case that prisoner Jumnadas had the cotton baled in his manufactory, and brought it for sale at the Ducca Bunder. The son (a mere boy), it must be observed, acted entirely for the father. That it was mixed with dew has been proved by the Kotwal first weighing five seers and finding it deficient by a quarter seer after being dried, and then by the Deputy Magistrate personally finding five seers fall short by three-eighths of a seer after exposing it in the sun for an hour or two, so that it has been fully proved to be fraudulently deteriorated. The Deputy Magistrate would also record here that, during the trial, a Peon was bribed with one rupee, by one Khimchund, to add some cotton secretly to that left out to dry, to prevent its weight falling short; and though the offence had been proved, and the Sudder Foujdaree Adawlut, under date the 11th December 1855, No. 2920, have made it a penal

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offence, the Deputy Magistrate has not been able to punish the offender from the want of a Regulation to act under.

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SURAT.

Offering for Sale, or Selling Cotton Fraudulently Deteriorated and mixed with Dew.

The prisoner Jumnadas Lalbhaee being found guilty, has, under Regulation III. of 1829, Section II., been adjudged to pay a fine of two hundred (200) rupees, in default of which to suffer imprisonment with hard labour for two (2) months; and the bale of cotton, under Section II. Clause 2nd, directed to be burnt.

The prisoner, paying the fine, has been liberated.

H. Liddell, Magistrate.

Reviewed by the Magistrate.—The Magistrate confirms the conviction and sentence in this case; but begs to point out to the Deputy Magistrate that the sentence ought to have included imprisonment. (Vide Morris' Reports, Volume IV. page 192.)

Resolution of the Sudder Foujdaree Adawlut.—It is very clear that the cotton was deteriorated, and was to be given to Cowasjee by Jumnadas's son, on his father's behalf, as part of a number of bales sold to Tribowun. Petitioner contends that, being a wholesale dealer, he is not responsible for the packing of the bales; but the Regulation makes no distinction between wholesale and retail dealers. Any person fraudulently offering deteriorated cotton for sale is punishable, whether he packed it or not, and whether he sell it for wholesale or retail. But prisoner's witness and servant, Ramjee, admits that he packed this cotton knowing it to be deteriorated, and that by an oversight it was taken away from the petitioner's screws. The petitioner is therefore not only liable for selling, but also for packing the cotton, and has received by no means a heavy punishment, and his petition must be rejected.

The offence was committed on the 19th April, and not taken up by the Deputy Magistrate until the 30th; this is not "without delay, and by such summary process as the Regulations will admit of," which Regulation III. A. D. 1829 requires.

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SURAT.

Offering for Sale, or Selling Cotton Fraudulently Deteriorated and mixed with dew.

The Deputy Magistrate has remarked that he can find no law for punishing a person who offered a bribe to a Sepoy in this case, although the Sudder Foujdaree Adawlut, in a Circular dated 11th December 1855, have made such an act penal. The Deputy Magistrate is right in the first point, that there is no law for punishing the offer or gift of a bribe under such circumstances; but he is in error in supposing that the Sudder Foujdaree Adawlut have made the act penal, for legislative authority does not rest with the Court, and the Legislature alone can make that penal which was not so before. The Circular Order quoted only withdrew a declaration that the offer or gift of a bribe to any public officer was not to be dealt with as a penal offence. It did not make the offer or gift of a bribe under all circumstances a penal offence; it only allowed of those offers of bribes which were penal offences being prosecuted, which the Circular above quoted might be thought to prohibit.

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NASSICK.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Petition of Abajee wulud Kundooba and another, to the Sudder Foujdaree Adawlut. Referred to the Joint Magistrate of Nassick, S. M. PELLY, on the 28th May 1856, for Report.]

Magistrate's Order in a Complaint of Encroachment.

Petition of Abajee wulud Kundooba and another to the Sudder Foujdaree Adawlut.—[Praying that an order of the Joint Magistrate of Nassick, permitting an encroachment on their premises, might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Joint Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Abajee wulud Kundooba and another, returning this Precept duly executed, or show

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NASSICK.

Magistrate's Order in a Complaint of Encroachment.

good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Assistant Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Assistant Magistrate in charge has the honour to return this Precept with the report called for.

The defendant, Tookaram Kasar, was building a house adjoining that of complainant, Abajee wulud Kundooba. This, together with complainant's house, formed one building. Tookaram had purchased one-half and Abajee the other. Tookaram wished to raise his house one story higher, but Abajee objected to his resting the necessary beams on the wall common to the two houses. Tookaram wished to put a post, already standing, further into the wall; to this also Abajee objected. The points in dispute were referred to the Assistant Magistrate, who, regarding the case as one for the decision of the Civil Court, declined to interfere, beyond binding over the parties not to commit any breach of the peace pending the award of the Civil Court. Tookaram (the defendant) appealed against the Assistant Magistrate's order to the Joint Magistrate, who considered that Abajee objected to the completion of a building which had been in progress for two years back, and the finished portion of which clearly showed a boundary line between the two houses, which necessarily brought the disputed section of wall within the bounds of the defendant's property. The defendant was therefore held to be in legal possession, and the Joint Magistrate declined to prevent him from completing the building. The complainant (Abajee), on the contrary, was a claimant out of possession, and if he wished to take the law into his own hands, he was of

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Magistrate's Order in a complaint of Encroachment.

course to be restrained from so doing (on the application of his opponents), it being likely to lead to a breach of the peace.

The Precept would have been returned earlier, but the late Joint Magistrate was anxious to send in a plan of the building to which the complaint has reference, that the points in dispute might be better understood. As, however, two plans have been made, and neither of them sufficiently clear to be of much use, the Assistant Magistrate, who received the charge on the 5th instant, considers it better to return the Precept at once than to wait any longer for the plan.

The petition is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause for interference, and reject the petition.

1856 July 30.

AHMEDABAD.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 151 of the Calendar of the Ahmedabad Sessions Court for 1855. Committed by the First Assistant Magistrate, W. A. RITCHIE, on the 10th December 1855. Tried by the Session Judge, A. B. WARDEN, on the 8th, 9th, 10th, 21st, 22nd, 27th, and 30th May 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Culpable Homicide.

Prisoners.—No. 1, Koompa Deepa, Kolee, aged 50.
2, Hathee Veera, Kolee, aged 30.
3, Narkhan Deepa, Kolee, aged 48.
4, Humeer Buloo, Kolee, aged 17.
5, Natha Jaimul, Kolee, aged 30.
6, Bhaijee Humeer, Kolee, aged 40.
7, Ooma Roopa, Kolee, aged 41.
8, Utoo Deepa, Kolee, aged 35.
9, Buna Juda, Kolee, aged 30.
10, Hetum Mumdoo, Musulman, aged 30.
11, Bajoo Megha, Kolee, aged 22.

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AHMEDABAD.

Culpable Homicide.

Prisoners.—No. 12, Uda Munhore, Kolee, aged 20.
13, Nana Veera, Kolee, aged 20.

Charge.—Wilful murder; in having, on or about Sunday night, September 23rd, 1855, (corresponding with Bhadrupud Shood 12th and 13th, Sumvut 1911,) within the limits of the village of Chulora, Purgunna Dholka, Zillah Ahmedabad, purposely, and without justifiable or extenuating cause, deprived of life Bhaijee Heemta, by wounding him with swords, arrows, and bludgeons, and occasioning injuries from the effects of which he died the same night; and thereby rendering themselves amenable to the provisions of Regulation XIV. Section XXV. Clause 1st, of 1827.

The prisoners plead not guilty.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—Prisoners are charged with wilful murder; in having, without justifiable or extenuating cause, deprived of life Bhaijee Heemta, by wounding him with swords, and arrows, and bludgeons. From the Inquest Report (No. 4), which has been proved by the evidence of witnesses Mukundas and Bechur (Nos. 2 and 3), it is ascertained that the death of the deceased was owing to several sword and arrow wounds. From the evidence of the witness Poona, widow of Bhaijee (No. 5), it appears that her husband (the deceased) and five others went about dusk into the fields, with the intention of watching the 'wanta' lands of Poonjajee Girasia, and that in about an hour afterwards one of her husband's companions came and informed her that her husband had been murdered. The evidence of the witnesses Kuntha and Dhuna (Nos. 6 and 7), the companions of the deceased Bhaijee, proves that soon after they had gone into Poonjajee's field, a large party of men, between thirty and forty, made their appearance, and the leader of the gang, prisoner No. 1 (Koompa), wounded the deceased Bhaijee with a sword, and then grappled with him; after which others of the gang—the

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Culpable Homicide.

first witness, Kuntha, says prisoners Nos. 2, 5, and 6 (Hathee, Natha, and Bhaijee); the second witness, Dhuna, says prisoners 2, 3, 5, and 13 (Hathee, Narkhan, Natha, and Nana)—wounded Bhaijee. On seeing Bhaijee fall, the witnesses ran away and gave the alarm in the village. These two witnesses have declared that they are positive as to the identity of all the prisoners, and that every one of them was concerned in the affray. These witnesses further deposed that one Turbhovun (witness No. 8), who was on a perch in an adjoining field, likewise witnessed the attack made on Bhaijee. The witness Turbhovun, however, has deposed that the gang consisted of only ten or fifteen men, and that from their conversation he gathered it was the intention of the gang to make a prisoner of Bhaijee. On seeing the gang he tried to put Bhaijee, who was in Poonjajee's plantation, and with whom he had been conversing a little while before (this circumstance is corroborated by the witness No. 7, Dhuna), on his guard, but did not succeed. After the gang had entered the plantation he heard blows given, but the plantain trees obstructed the view, and he did not see what occurred; he only recognised one of the gang, prisoner No. 1 (Koompa), by his voice. Before the Magisterial Authorities this witness stated that Bhaijee had three or four companions, whereas before this Court he has stated that Bhaijee was alone. This may either be owing to forgetfulness, for eight months have elapsed since the affray took place, or the witness may have been tampered with: the Court thinks the latter, and that he witnessed more than he is willing to tell, for he gave his evidence with very great reluctance, and at first stated that all the gang had cloth tied round their faces, but, on being more particularly questioned, said he did not know whether all or only some of the gang had cloth bound round their faces. The witnesses Sajoo, Kala, and Bajoo (Nos. 9, 10, and 11), on the evening in question

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Culpable Homicide.

accompanied Bhaijee and the witnesses Nos. 6 and 7 (Kuntha and Dhuna) part of the way only, because they had to keep watch in another field, viz. that belonging to Guneshjee Girasia. They have deposed that about an hour after their arrival in Guneshjee's field they heard a disturbance in the direction of Poonjajee's field, and on repairing to the spot found Bhaijee lying dead in Poonjajee's field, and a gang of about thirty men near him. The first two of these witnesses have stated that they actually saw the gang striking Bhaijee with their swords and bludgeons; whereas the third, who says he came up a little after the other two, has deposed that the gang were retreating, but, on seeing him and his companions approach, they returned. All three witnesses say that they were attacked by the gang. Prisoner No. 1, before the Police Amuldar, confessed that he was aware that Bhaijee had been appointed in his place watchman of Poonjajee's wanta lands, and that he had attacked and wounded Bhaijee; but before the Assistant Magistrate and this Court he has retracted his confession to some extent, viz. that he was not aware that Bhaijee had been appointed watchman of the wanta lands of the Girasias, and that in going his rounds he had caught Bhaijee stealing plantains, and Bhaijee, on being detected, came up and attacked him, and he (prisoner), in self-defence, wounded Bhaijee. Prisoners Nos. 2 and 3 (Hathee and Narkhan) admit having been present when Bhaijee was wounded; the former, however, also admits having beaten Bhaijee. Both these prisoners have qualified their confessions by representing that Bhaijee was caught in the act of stealing plantains, and was the first to commence the attack. Prisoner No. 1 (Koompa) has not urged that his confession before the Police Amuldar was extorted by threats, &c., but that he was in pain from a wound which he had received, and knew not what he was saying. The above evidence, and the

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confessions of the aforesaid three prisoners, prove that they were concerned in the affray. It is true the prisoner No. 2 (Hathee) denies having struck Bhaijee, but this does not exculpate him; for when a number of persons are collected together for an unlawful purpose the act of one is the act of all. The rest of the prisoners deny having been present, and some of them, viz. prisoners Humeer, Ooma, Uttoo, Bunna, Hetum, and Nana (Nos. 4, 7, 8, 9, 10, and 13), either before the Magisterial Authorities or before this Court, attempted to prove *alibis*, but signally failed, and have therefore strengthened the evidence against themselves. No less than five witnesses have stated that all the prisoners were more or less concerned in the affray; but it must be borne in mind that four out of the five are relations of the deceased Bhaijee. But the majority of the prisoners having failed in their attempt to prove *alibis*, the evidence of the above witnesses appears trustworthy as far as these prisoners are concerned; and if trustworthy as far as they are concerned, there is no reason why equal credit should not be given to that part of their statements which relates to the four prisoners, viz. Nos. 5, 6, 11, and 12, who have rested contented with denying all knowledge of the matter. The prisoners Nos. 1, 2, and 3, in their confessions, state that the rest of the prisoners were not present when the affray took place. Now, although the confession of one prisoner cannot be received as evidence against another, yet it is allowable to give one prisoner the benefit of any facts that may be brought to light by the confessions of another prisoner; but in this instance the assertions of the first three prisoners cannot be allowed any weight, for they may have a motive in stating that, besides themselves, only one other person (Dewa, since dead) was present when the affray took place, for by making it appear that their party was weaker than Bhaijee's, and that in self-defence

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they wounded Bhaijee, they would shift much of the blame from their own shoulders. The Court, under the above circumstances, considers it satisfactorily proved that all the prisoners were more or less concerned in the affray. The next point for consideration is the degree of criminality which attaches to the prisoners. The evidence of the Girasias Guneshjee, Motijee, and Poonjajee (witnesses Nos. 12, 13, and 14), proves that they, being dissatisfied with prisoner No. 1 (Koompa), appointed the deceased (Bhaijee) 'watchman of their wanta lands, three days previous to that on which Bhaijee was killed. Now the Vakeel of the prisoners has, throughout the whole case, tried to prove that the aforesaid Girasias had not the power to give Koompa (prisoner No. 1) his discharge and appoint Bhaijee in his place; but this does not exonerate the prisoners. Whether the Girasias had the right to discharge Koompa or not, is a question to be decided by a Civil Court and not by a Criminal Court. Admitting that the Girasias were not authorised in appointing their own watchman, yet, as the evidence proves that Koompa (prisoner No. 1) and some of his fellow prisoners were aware that their services were no longer required by the Girasias, who had placed their wanta lands under Bhaijee's care, prisoner No. 1 (Koompa) was not justified in taking the law into his own hands, and getting rid of his rival by killing him. There is another circumstance which tells against prisoners Nos. 1, 2, and 3. They have tried to make out that they caught Bhaijee stealing plantains; but this story of theirs is set aside not only by the evidence of the Girasias, who actually sent Bhaijee to their fields, but by the evidence of witnesses Nos. 15, 17, and 18 (Balloo, Budur, and Laldas), who have deposed that by the light of a torch they thoroughly examined the spot where the affray took place, and did not find a single plantain lying on the ground, whereas on the following morning (vide

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depositions of witnesses Nos. 15 and 19 (Balloo and Heemchund) bunches of plantains were found lying on the ground. Now, had these bunches been cut by Bhaijee and his companions previous to the affray, some of them, if not all, would certainly have been observed by the witnesses who examined the spot immediately after the affray had taken place. It is true that two arrows were also found in the morning, which had not been seen the previous night; but then the arrows were objects which might escape observation, but not so the enormous bunches of plantains, which could not escape the notice of persons who examined the spot for proofs of the affray. It is, therefore, quite clear that the plantains must have been cut and thrown where they were found subsequent to the affray, and the only parties who could possibly have had any motive in doing so were the prisoners; they must, therefore, have themselves placed the plantains where they were found, or caused them to be placed there. The witness Dhuna (No. 7) has deposed that prisoner No. 1 (Koompa) made an attack on Bhaijee without saying a word; whereas the witness No. 6 (Kuntha) has deposed that Koompa (prisoner No. 1) first challenged Bhaijee, on which Bhaijee gave his name, and said that he was on his beat, and told the prisoners to stand on theirs, to which prisoner No. 1 (Koompa) replied, "Which is our beat, and which is yours?" and then attacked Bhajjee. The witnesses have declared that one of them attacked the prisoners, and they have also stated that they did not see Bhaijee strike any of the prisoners; it is, however, quite evident that either Bhaijee or some of his party did strike prisoner No. 1 (Koompa), for he has the scars of two severe wounds, which the evidence of some of the witnesses proves to have been quite fresh at the time of his apprehension; and, again, a man named Dewa, who belongs to the prisoner's party, died of wounds received on the night in question: it is,

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AHMEDABAD.

Culpable Homicide.

therefore, self-evident that either Bhaijee or some of his party offered resistance, and made great use of their swords. If things had been reversed, and the witnesses Kuntha and Dhuna had been arraigned for aiding and abetting in the murder of Dewa and an assault on Koompa, the evidence against them would have been that of the prisoners at the bar, and they would have stated that Bhaijee, &c. first commenced the attack. The Court entertains no doubt whatever that Koompa and his party were the aggressors; for, knowing, as some of them did, that Bhaijee had charge of Poonjajee's lands, there was no necessity for their going to Poonjajee's field, and they evidently went there in search of Bhaijee; but whether with the intent to kill him, or merely to beat him and his party and drive them away, with a view to prevent Bhaijee, &c. interfering with their rights, it is impossible to say, as the principal witnesses against the prisoners are relations of Bhaijee, and as the wounds received by prisoner No. 1 (Koompa) and the deceased Dewa were not accounted for by the witnesses. The Court considers it but just to give the prisoners the benefit of any doubt that may exist as to what their real intentions were. The Court therefore acquits prisoners of the more heinous offence, viz. wilful murder, and finds them guilty of culpable homicide; in having, on or about Sunday night, September 23rd, 1855, (corresponding with Bhadrupud Shood 12th and 13th, Sumvut 1911,) within the limits of the village of Chulora, Purgunna Dholka, Zillah Ahmedabad, without justifiable or extenuating cause, deprived of life Bhaijee Heemta, by wounding him with swords, arrows, and bludgeons, and occasioning injuries from the effects of which he died the same night; and thereby rendering themselves amenable to the provisions of Regulation XIV. Section XXVII. of 1827.

As the prisoners Koompa, Natha, and Bhaijee (Nos. 1, 5, and 6) have been previously convicted, the Court,

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Culpable Homicide.

previous to passing sentence, proceeds to take evidence regarding their former convictions.

* * * * * * *

After taking into consideration the nature of the offence proved against the prisoners, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVII. of 1827, the sentence of the Court is that you, prisoner No. 1 (Koompa), be imprisoned and kept to hard labour for ten (10) years, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut; and that you, prisoner No. 2 (Hathee), prisoner No. 3 (Narkhan), prisoner No. 5 (Natha), prisoner No. 6 (Bhaijee), prisoner No. 7 (Ooma), and prisoner No. 13 (Nana), be each imprisoned and kept to hard labour for a period of five (5) years; and that you, prisoner No. 4 (Humeer), prisoner No. 8 (Utoo), prisoner No. 9 (Buna), prisoner No. 10 (Heetum), prisoner No. 11 (Bajoo), and prisoner No. 12 (Uda) be each imprisoned and kept to hard labour for one (1) year. The Court has thought it necessary to pass a severer sentence on prisoner No. 1 (Koompa) than on the others, owing to his having been the most active in the affray, and the first who commenced the attack. Lenient sentences have been passed on prisoners Nos. 4, 8, 9, 10, 11, and 12, because they did not take so prominent a part in the affray as the other prisoners.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

The Court observe that as the Session Judge found that the prisoners sought out the deceased for the purpose of assaulting him, and, in the course of that assault, that the deceased was killed by them, he ought to have recorded a conviction of "murder" and "aiding in murder."

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CASES

DISPOSED OF BY THE

SUDDER FOUJDAREE ADAWLUT OF BOMBAY,

IN AUGUST 1856.

1856 August 7.

BELGAUM.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 4 of the Criminal Return of the Magistrate of Belgaum for April 1856. Tried by the Second Assistant Magistrate, C. SHAW, on the 2nd April 1856. Proceedings certified, on the requisition of the Sudder Foujdaree Adawlut.]

Fraud as a Village Officer.

Prisoner.—Bhurma bin Erupa, Punchal, aged 30.

Charge.—Fraud as a Village Officer; in having, on or about the 5th February 1856, (Shuké 1777, Poush Shood 14th,) in the village of Ekoondee, Talooka Pursgurh, when testing money in accordance with his duties as Village Goldsmith, inserted a base rupee in exchange for a good one, in the instalment of one Shivuna. (Regulation V. of 1833; Regulation XVI. Section XI. of 1827.)

Prisoner pleads not guilty.

C. Shaw, Second Assistant Magistrate.

Finding and Sentence by the Second Assistant Magistrate.—The prisoner (Bhurma) acknowledged that he inserted the base rupee, now produced, amongst Shivuna's good rupees, one of which he took in exchange; and is, in accordance with Regulation XIII. Section

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BELGAUM.

Fraud as a Village Officer.

XXXVII. Clause 2nd, found guilty of the charge set forth at the commencement of these proceedings, and is sentenced, under Regulation XVI. Section XI. Clause 3rd, to undergo six (6) months' imprisonment with hard labour.

The base rupee is forwarded to the Treasury, Belgaum.

The Mamlutdar is informed that the charge on which he committed the prisoner, viz. under Regulation XIV. of 1827, Section XIX. Clause 2nd, is wholly inapplicable; he should also have sent Hunmunta as a witness for the prosecution.

Extract, pargaraph 1, *of a Letter from the Sudder Foujdaree Adawlut to the Magistrate.*—In acknowledging the receipt of your Criminal Return for April last, I have the honour, by direction of the Judges of the Sudder Foujdaree Adawlut, to request that you will have the goodness to report, with reference to Case No. 4, what office the Village Goldsmith holds in the Revenue Department.

Reply of the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—In reply to the 1st paragraph of your letter No. 1505, of the 26th ultimo, I have the honour to state, for the information of the Judges, that the office of the Village Goldsmith in the Revenue Department is to examine and test the coin collected from the Ryuts on account of Government, and that for this purpose he sometimes has public money in his charge.

Further Extract, paragraph 1, *of a Letter from the Sudder Foujdaree Adawlut to the Magistrate.*—I have the honour, by direction of the Judges of the Sudder Foujdaree Adawlut, to acknowledge the receipt of your letter No. 1180, dated 8th instant, relative to certain cases of your Calendar for April last, and to request that you will have the goodness to certify the proceedings in Case No. 4.

Further Reply of the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to

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certify the proceedings (English and Canarese) in the case of Bhurma bin Erupa, No. 4 of the Belgaum Criminal Return for April last, as called for in the 1st paragraph of your letter No. 1745, of the 25th instant.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate is to be informed that the provisions of Chapter II. Regulation XVI. A. D. 1827 apply, as he will see from the heading of the chapter, only to Native Officers on the regular establishment of the Collector; that these provisions have, by Section III. Regulation V. A. D. 1833, been extended to all Native Officers on the establishment of the Collector employed in the settlement and management of the revenue; but that the Village Goldsmith, though it may be his duty to examine the rupees brought in payment of the revenue, cannot be considered an Officer either on the regular establishment of the Collector or employed in the settlement and management of the revenue. The prisoner cannot, therefore, be tried under the Regulation quoted, and his conviction must be annulled. The Court, however, are of opinion that a charge of breach of trust might be proved against him.

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POONA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 32 of the Calendar of the Poona Sessions Court for 1856. Committed by the Deputy Magistrate, NANA MOROJEE, on the 5th May 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 8th, 9th, and 10th May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of Koowursing bin Prubhatsing and the other prisoners, excepting Shunkrajee Ramchundra Kasheekur.]

Conspiracy.

Prisoners.—No. 1, Shunkrajee Ramchundra Kasheekur, Brahmin, aged 58.

2, Vishnoo Keshow Aptay, Brahmin, aged 22.

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POONA.

Prisoners.—No. 3, Koowursing bin Prubhatsing Purdesee, aged 40.
4, Ragho Balajee Babooleekur, Brahmin, aged 24.
5, Govind Pandoorung Goklay, Brahmin, aged 22.

Conspiracy.

[See pages 9 to 13 for previous proceedings in this case.]

C. M. Harrison, Acting Session Judge.

Return of the Acting Session Judge to the Precept of the Sudder Foujdaree Adawlut of the 2nd August.—The petitions have been received and delivered to the prisoners.

With reference to the remark contained in the 2nd paragraph of the extract received with this Precept, that the written defences 26, 28, and 31 should not have been recorded, the Acting Session Judge begs to forward the following copy of an extract received with the Court's Precept No. 698, of the 20th September 1854 :—

"The Session Judge is to be informed that, on reconsideration, the Court have determined that written defences may be recorded in a criminal case."

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—Mr. Harrison is right. I had entirely forgotten the decision of the 17th August 1854. I see that my opinion then was the same that it is now, but that I was overruled. I cannot, however, understand how it came to be declared an interpretation of the law, for I see many reasons why that decision should not have been received as an interpretation unless all three Judges concurred. However, it has been published as permissive; but I shall never find fault with a Session Judge for not availing himself of the permission, and hope I shall recollect not to remark again upon a Session Judge who does avail himself of it.

Resolution of the Sudder Foujdaree Adawlut.—Mr. C. M. Harrison is right. The Court had entirely overlooked the decision of the 20th September 1854.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

1856 August 7.

TANNA.

[Petition of Luximonsett Dusrutsett to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Tanna, E. C. JONES, for Report, on the 11th June 1856.]

Enforcing Payment of the Revenue.

Petition of Luximonsett Dusrutsett to the Sudder Foujdaree Adawlut.—[Praying for an order to the Magistrate of Tanna to expedite the inquiry into the complaint against the Mahalkuree Police Amuldar, of using violence towards the petitioner.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition presented to this Court by Luximonsett Dusrutsett, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate of Tanna has the honour to state that he received a report on Saturday evening, from the Joint Magistrate of Colaba, to the following effect :—

"It would appear a large balance of revenue was outstanding at the close of the year against the petitioner, which he refused to pay. The First Karkoon, in the absence of the Mahalkuree, accordingly forwarded him in charge of a Sepoy with a report to the Mamlutdar. Petitioner managed to evade the order on various pretences, and five or six days after was with much difficulty, but without force, brought before the Mahalkuree. Petitioner still persisted in his refusal to pay, and as the ordinary process of the law had failed in his case, the

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Enforcing Payment of the Revenue.

Mahalkuree considered compulsory measures necessary, and ordered him to be fettered, with the intention of sending him on to the higher Authorities to be treated as a revenue defaulter.

"Under ordinary circumstances the course pursued by the Mahalkuree would have been highly improper and unwarrantable; but in the present case he had a very difficult part to play, as the Khots, or farmers, of the Tullé Péta, in the hope of obtaining larger remissions, or some abatement, in the 'tussur' rates of assessment, which the Sub-Collector did not see fit to grant, had combined together to withhold payment of their rents, and balances to the amount of Rs. 21,000 were due from them at the time. Their opposition not only affected the revenue of that particular district, but materially hindered the collection of the revenue in all the Talookas of the Sub-Collectorate.

"The Mahalkuree was a stranger, and had joined the Office only three or four days, so that his proceedings could not have resulted from motives of spite or ill-will. His predecessor had been removed for official negligence and supineness; in fact, he had been frightened out of his propriety by the Khots, and they were annoyed at the defection of several of their own party, whose good sense had led them to listen to the Mahalkuree's advice, and who had cleared off their balances, thereby destroying the perfection of the combination they had hoped to maintain, and, with it, the chance of their opposition being successful.

"It was with this spirit of turbulence and ill-feeling that the Mahalkuree had to combat, and his conduct must be judged in relation to the circumstances in which he was placed. He seems to have been under the impression, in which the Joint Magistrate conceives he was right, that words would have been wasted on the petitioner; but he might have given him another chance

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of going quietly with the Sepoy in case he still objected to pay, and if he had then skulked or run away compulsory measures must necessarily have been resorted to. His over-zeal led the Mahalkuree to act with a precipitancy which is so far excusable, that it is in the highest degree probable he would have been compelled to have acted in the same way after due deliberation in the natural course of events. He is more to be blamed for having yielded either to the remonstrances of the Khots or to his own fears, and released the petitioner after a short interval, instead of forwarding him on at once to the Mamlutdar.

"In respect to his complaint that he was forcibly dragged from his dinner to the Mahalkuree's, &c., the petitioner has considerably modified his statement in his deposition; and if he is to be believed, it amounts merely to the fact that the Sepoy took hold of him by the wrist while he had still two or three mouthfuls of his meal to finish, but that he was allowed to wash and dress himself at leisure before proceeding to the Kutcheree.

"The petitioner further complains of the delay which has taken place in the disposal of his case. The fault rests principally with himself, in being absent and leaving no intimation of his place of residence. His petitions, as received, were regularly forwarded for disposal by the return post. He only made his appearance before the Joint Magistrate on the 1st July, in answer to a summons issued on the 16th June and which reached him on the 21st, and the delay which occurred before the Mamlutdar was owing to orders he had received to lay aside other work and confine himself strictly to the investigation of the cases of supposed kidnapping, &c. which at that time were creating some little disturbance among the people in the district.

"The Precept was received on the 19th June; the petitioner did not appear till the 1st July; and the

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TANNA.

Enforcing Payment of the Revenue.

attendance of the witnesses, &c. was obtained on the 11th."

The cause of complaint arose at Tullé, in the Joint Magistracy of Colaba, and the Joint Magistrate was called upon to report upon the matter set forth in the petition; hence the delay in returning this Precept within the prescribed time.

The original petition is returned.

Resolution of the Sudder Foujdaree Adawlut.—The Joint Magistrate is to be informed that if the powers vested in the Sub-Collector by law are not sufficient for him to secure the revenue, he should apply to the Legislature to have those powers extended. The Joint Magistrate should not countenance in his subordinates, and attempt to palliate, their taking upon themselves powers which the law does not give them. As the Collector has authority over the Sub-Collectorate, the Court would recommend that he should take notice of the misconduct of which the Mahalkuree of Tullé has been guilty. To refer it to the Sub-Collector, after his attempted palliation of the Mahalkuree's conduct, would be useless, and the Court will not bring the case to the notice of Government till all other modes of redress have failed.

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AHMEDABAD.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 32 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate, W. A. RITCHIE, on the 21st January 1856. Tried by the Session Judge, A. B. WARDEN, on the 29th May, 12th, 13th, and 25th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Wilful Murder, attended with Robbery by Day, without Force.

Prisoner.—Sooliman Gula, Ghanchee Borah, aged 20.

Charge.—Wilful murder, attended with robbery by day, without force; in having, on or about Sunday, 6th

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AHMEDABAD.

Wilful Murder, attended with Robbery by Day, without Force.

January 1856, (corresponding with Margsheersh Wud 14th, Sumvut 1912,) within the limits of Botad village, Purgunna Dhundooka, Zillah Ahmedabad, induced Doshee, aged about six years, daughter of Aba Jeewa, and grand-daughter of Hajoo, to go with him to see the Right Honorable the Governor's elephants then picketed outside the village, and after robbing her of a silver necklace and 'saree,' of the estimated value of Rs. 9½, wilfully, and without justifiable or extenuating cause, deprived her of life, by throwing her into a well; thereby rendering himself amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, and Section XXXVII. Clause 4th, of 1827.

The prisoner pleads guilty.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with wilful murder; in having thrown a girl named Doshee, aged about six years, into a well, and thereby deprived her of life, for the sake of her ornaments. From the Inquest Report (No. 3), which has been proved by the evidence of witnesses Dosa Aba (No. 1) and Motee Ramjee (No. 2), it appears that the death of the girl was caused by drowning. The evidence of the witness Abba Gunee (No. 10) proves that he discovered the corpse of the deceased floating in a well belonging to Khatee Samut Wala. The evidence of the witnesses Kureemshee Rooda, Nathee, and Ram (Nos. 5, 6, and 9), proves that the prisoner was seen by them to go down into the said well with something about the size of a child of six or seven years old tied up in a cloth. Before the Magisterial Authorities these witnesses said that the child's head was visible, but in their statements before this Court there are slight discrepancies; one saying the hair of the head was visible, another that the child's hand was visible. Notwithstanding these discrepancies, there is not a particle of doubt that it was the deceased whom the prisoner was

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AHMEDABAD.

Wilful Murder, attended with Robbery by Day, without Force.

seen carrying tied up in the cloth, for the prisoner made a full confession to that effect not only before the Native Authorities but also before the First Assistant Magistrate. In support of the above there is also the evidence of the Sepoy (witness No. 7), which proves that he was present when prisoner pointed out the spot where he had concealed the necklace which he had removed from the neck of the deceased. Before this Court prisoner has not denied having murdered the child, but has stated that he was under the influence of 'ganja,' and therefore does not know what he did. When the Court was questioning the witnesses who had attested the prisoner's confession, as to whether the prisoner had been beaten and made to confess, the prisoner immediately laid hold of this and represented that he had been beaten, and called a witness to prove this. The evidence of the said witness (recorded as No. 19) merely shows that the prisoner, while being examined, had his arms tied behind him; but the evidence of this witness, whose name was not mentioned by prisoner until the last moment, is not sufficient proof of the confession having been extorted. The prisoner has not attempted to prove that he was under the influence of ganja when he committed the deed; and as there is not one extenuating circumstance, the Court finds the prisoner guilty of wilful murder, attended with robbery by day, without force; in having, on or about Sunday, 6th January 1856, (corresponding with Margsheersh Wud 14th, Sumvut 1912,) within the limits of Botad village, Purgunna Dhundooka, Zillah Ahmedabad, induced Doshee, daughter of Aba Jeewa, to go with him, and, after robbing her of a silver necklace and saree, of the value of Rs. 9½, wilfully, and without justifiable or extenuating cause, deprived her of life, by throwing her into a well.

After taking into consideration the nature of the offence proved against you, prisoner Sooliman Gula,

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AHMEDABAD.

Wilful Murder, attended with Robbery by Day, without Force.

and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVI. Clause 4th, and Section XXXVII. Clause 3rd, of 1827, to which you have rendered yourself amenable, the sentence of the Court is, that you be hanged by the neck until you be dead, at the usual place of execution at Ahmedabad. This sentence is, however, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

The witness Hajoo (No. 4) deposed to the necklace before the Court belonging to the deceased. The Session Judge should have elicited from her, also, whether it was the one the deceased had on when last she saw her alive.

The Session Judge is to be requested to report why he, on two occasions, sent direct to the District Police Officer for the witnesses he wanted, instead of writing through the Magistrate.*

It was not necessary to examine the witness Dessuljee (No. 7) on any of the points on which he was examined, except to his having gone with the prisoner (Sooliman) to search for the necklace, the rest of his evidence being mere hearsay, or what might have been better obtained from other witnesses.

* The Session Judge reported in reply that his object was to avoid delay.

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SHOLAPORE.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Petition of Wamun Jeewajee and two others to the Sudder Foujdaree Adawlut. Referred to the Session Judge of Sholapore, T. A. COMPTON, for Report, on the 14th May 1856.]

[See pages 848 to 850, Vol. V., for previous proceedings in this case.]

Petition against the Proceedings of a Session Judge.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut of the 26th June 1856.—The Session Judge has the honour to explain, for the information of the Judges of the Sudder Foujdaree Adawlut, that it appears from the proceedings of the Deputy Magistrate that the petitioners were never put on their trial for "resistance to a legal process," or "intimidating witnesses," but for using "abusive language."

The Session Judge was under the impression that, by the Regulations, the discharge of offenders by a Magistrate for want of sufficient proof cannot be considered an acquittal and a bar to any future prosecution; and further, that as he was of opinion that the case could not have been rightly decided by the Deputy Magistrate, Section LII. Regulation IV. of 1827 fully justified his proceeding afresh against offenders who had so openly and daringly obstructed an Officer of the Zillah Courts in the execution of his duty.

Under this explanation the Session Judge respectfully trusts the Court will not object to the petitioners being placed on their trial, seeing that the three witnesses, whose depositions were taken by the Session Judge before handing up the case to the Magisterial Department, were never even called up by the Deputy Magistrate.

The delay in answering this Precept has been owing to the Deputy Magistrate's proceedings having only this day been received from the Magistrate, who imagined

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that they were at the Adawlut, and not in the Deputy Magistrate's records.

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SHOLAPORE.

Petition against the Proceedings of a Session Judge.

The Deputy Magistrate's English proceedings are forwarded herewith.

Resolution of the Sudder Foujdaree Adawlut.—The Session Judge is to be informed that it is only in cases not within the final jurisdiction of the Magistrate that a discharge by that Authority does not amount to an acquittal, and that he ought to have recollected that, except in cases of perjury, the Zillah Judge has no original jurisdiction, and that he could not, under the Regulations, put the petitioners upon their trial until they had been committed by the Magistrate; and that the Judges do not think that proceeding contrary to law is likely to prevent the Judge and his Court becoming a laughing-stock and subject of ridicule, to avoid which the Judge says, in the 5th paragraph of his Return of the 11th June, was his object. If the petitioners have not been tried for resisting legal process, the Judge can of course prefer that charge against them; but, unless on inquiry it proves to be less frivolous than the charge of abuse, the Court would recommend the Judge to let it drop.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

1856 August 7.

POONA.

[Petition of Baboorao Gopal to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Poona, D. DAVIDSON, for Report, on the 16th July 1856.]

Order of a Magistrate in a Claim to Property.

Petition of Baboorao Gopal to the Sudder Foujdaree Adawlut.—[Praying that the order of the Magistrate of Poona, forbidding him to do anything to a wall which is the joint property of the petitioner and another, who opposes his building it, be set aside.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to certify the

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POONA.

Order of a Magistrate in a Claim to Property.

papers and proceedings, together with your report, upon the matter set forth in the accompanying petition, presented to this Court by Baboorao Gopal, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate has the honour to certify the papers, &c. as required above, and to report that petitioner claims to build a wall in Poona, which he states to be the joint property of himself and another individual, viz. Ramajee Rao Kamvelker. If it is joint property, he has no title to act as if it was his alone; but Ramajee Rao denies he has any interest in the wall. Under these circumstances the Deputy's order in the case was upheld by the Magistrate, and petitioner was informed he might make out his right in the Civil Courts.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause for interference.

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SHOLAPORE.

Present, WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, Puisne Judges.

[Case of Nana wulud Ramjee, a convict in the Jail at Sholapore, recommended by the Session Judge of Sholapore, A. COMPTON, on the 26th July 1856. Submitted by the Sudder Foujdaree Adawlut to Government.]

Unexpired portion of a Sentence remitted.

Letter from the Civil Surgeon to the Session Judge.—I have the honour to bring to your notice that Nana wulud Ramjee, a prisoner in the Sholapore Jail, is suffering under an aggravated form of leprosy, and has been

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SHOLAPORE.

Unexpired portion of a Sentence remitted.

in hospital since the 28th March 1856. The disease is, in my opinion, incurable, and will ultimately prove fatal to the patient; under these circumstances I have reported the case to you, in order that application for a remission of his sentence (three years' imprisonment) may be made, should such a course appear to you advisable.

Reference from the Session Judge to the Sudder Foujdaree Adawlut.—I have the honour to submit herewith, for the consideration of the Judges of the Sudder Foujdaree Adawlut, the accompanying copy of a letter from the Civil Surgeon, Dr. Sylvester, bringing to my notice the deplorable condition of one of the prisoners in the Jail, named Nana wulud Ramjee.

The prisoner in question was sentenced to three years' imprisonment for "robbery by night accompanied with force," on the 22nd June 1855, and is now suffering so dreadfully from black leprosy, that I am very humbly of opinion that he should be released from prison, and the remaining portion of his sentence remitted.

He is a most loathsome object from sores all over his body, and the joints of his toes have sloughed away; and it appears to me that it cannot serve any practical purpose to retain so miserable a being in confinement.

Letter from the Registrar of the Sudder Foujdaree Adawlut to the Secretary to Government.—I am directed by the Judges of the Sudder Foujdaree Adawlut to hand up the accompanying documents in the case of Nana wulud Ramjee, a convict in the Sholapore Jail, and, under the circumstances therein reported, to request you will lay the same before the Right Honorable the Governor in Council, with the recommendation of the Court that the unexpired portion of the sentence may be remitted.

Resolution of Government.—That the unexpired portion of the sentence of Nana wulud Ramjee be, under the circumstances stated in the letter of the Session

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SHOLAPORE.

Unexpired portion of a Sentence remitted.

Judge, remitted, and the prisoner discharged from custody.

Resolution of the Sudder Foujdaree Adawlut.—The requisite warrant is issued to the Session Judge of Sholapore.

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DHARWAR.

Perjury.

Present, { WILLIAM HENRY HARRISON, / ROBERT KEAYS, } Puisne Judges.

[Case No. 80 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Assistant Magistrate, G. S. FORBES, on the 20th June 1856. Tried by the Session Judge, A. W. JONES, on the 30th June 1856. Proceedings submitted for the final decision of the Sudder Foujdaree Adawlut, by the Session Judge.]

Prisoner.—Yelowa kom Mula, Dhungur, aged 60.

Charge.—Perjury (Regulation XIV. Section XVI. Clause 1st); in having, on Monday, the 10th March 1856, (corresponding with Falgoon Shood 4th, Shuké 1777,) stated on solemn affirmation before the Police Amuldar of Hooblee, that she saw two women, named Dyamawa and Goodyawa, quarrelling, and that the latter struck the former four blows with her hand; also, that one night, about 12 o'clock, she heard the woman Dyamawa crying out, "Ah, ah! oh!" and that she heard these screams; which deposition she confirmed before the First Assistant Magistrate, on the 8th and 9th April 1856; and in having subsequently, when examined as a witness in the case in which Dyama and others were charged with murder before the Session Judge of Dharwar, on Saturday, the 7th of June 1856, (corresponding with Jesht Shood 5th, Shuké 1778,) denied, on solemn affirmation, that she had ever made such statement before the Police Amuldar of Hooblee; wilfully perjuring herself, with intent to obstruct the course of justice.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with wilful perjury, and pleads not guilty.

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DHARWAR.

Perjury.

The prisoner was a witness in a case where Dyama Goodyawa and Kenchama were charged with murder, in having barbarously misused a woman named Dyamawa (the wife of the first and the daughter-in-law of the second prisoner), by branding her on the posteriors, &c. and in her (the prisoner's) deposition before the Police Amuldar of Hooblee, which she confirmed before the Assistant Magistrate, she stated that she had seen a quarrel between Goodyawa and the deceased, in which the former had struck the latter several times, and that, two or three nights after, she had heard the deceased screaming, this being the particular night in which the branding was supposed to have taken place. When examined before the Session Judge, however, she denied that she had heard these screams, and in particular denied that she had stated to that effect before the Police Amuldar.

The prisoner now says that the former statement was true, and accounts for her denial of it before the Session Judge by saying she was confused. The witnesses have proved that she was quite in her senses, however, at the time, and the Session Judge must say that he never examined a witness who had less appearance of confusion, for it was most difficult to get any but the most evasive answers as to what she had seen and heard, and it was only when the direct question was put to her that she flatly denied her former depositions as to the hearing of these screams. The Session Judge has, therefore, no doubt whatever that the perjury was wilfully committed, with intent to enable the prisoners, in whose house she was a servant, to escape conviction.

The prisoner is therefore convicted of wilful perjury; in having, on Monday, the 10th March 1856, (corresponding with Falgoon Shood 4th, Shuké 1777,) stated on solemn affirmation, before the Police Amuldar of Hooblee, that she saw two women, named Dyamawa and Goody-

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DHARWAR.

Perjury.

awa, quarrelling, and that the latter struck the former four blows with her hand; also, that one night, about 12 o'clock, she heard the woman Dyamawa crying out, "Ah, ah! oh!" and that she heard these screams; which deposition she confirmed before the First Assistant Magistrate on the 8th and 9th April 1856; and in having, when examined as a witness in the case in which Dyama and others were charged with murder before the Session Judge of Dharwar, on Saturday, the 7th June 1856, (corresponding with Jesht Shood 5th, Shuké 1778,) denied, on solemn affirmation, that she had ever made such statement before the Police Amuldar of Hooblee; thereby wilfully perjuring herself, with intent to obstruct the course of justice.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XVI. Clause 1st, the following sentence is passed:—

That you, Yelowa kom Mula, be imprisoned and kept to hard labour for three (3) months, and then pay a fine of one hundred (100) rupees, or be further imprisoned for nine (9) months, also with hard labour. Subject to the confirmation of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence confirmed.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

1856 August 13.

BELGAUM.

[Case No. 72 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Deputy Magistrate, RAGHOBA JUNARDHUN, on the 28th May 1856. Tried by the Session Judge, A. W. JONES, on the 7th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Prisoner.—Girya bin Sidrama, Dhungur, aged 25.

Murder.

Charge.—Murder (Regulation XIV. A. D. 1827, Section XXVI. Clause 1st); in having, on the evening of Sunday, the 11th May 1856, (corresponding with Wuishak Shood 7th, Shuké 1778,) in a nulla situated within the limits of the village of Moosgoopee and the hamlets of Goojgunhutee and Jakunhutee, of the Gokak Talooka, in the Belgaum Division of the Dharwar Zillah, wilfully, and without any extenuating cause, deprived of life his own wife, Luxmee, aged twenty years, by inflicting six wounds on her person with a sword, in consequence of which she, the said Luxmee, then and there died.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder, and pleads guilty.

It appears that the prisoner left his village of Suidee Koorbeth on Sunday, the 11th May, in company with his wife, whom he was taking to her parents' house, and that, according to his own account, he met on the road a man named Appiya, with whom he believed his wife to be too intimate, and that they had a quarrel, and that his wife abused him, on which, losing his temper, he drew his sword, and, after vainly attempting to reach Appiya, turned upon his wife, and killed her by inflicting on her six wounds. The Inquest Report, which was read before the Court, shows that this woman was killed in this way by six wounds, apparently inflicted with a sword; and as the prisoner has pleaded guilty before the

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BELGAUM.

Murder.

Court, and has also admitted before the Court the confession which he had previously made before the Police and Magisterial Authorities, detailing the manner in which he committed the murder; and as the fact of the wife of the prisoner being a woman of bad character, which is mentioned by the Police Patel, and the presence and insults of the man with whom the prisoner believed her to be criminally intimate, however much provocation they may be allowed to cause to him, are yet not any excuse for killing his wife, the Session Judge must convict the prisoner of murder. And he is accordingly convicted of murder; in having, on the evening of Sunday, the 11th May 1856, (corresponding with Wuishak Shood 7th, Shuké 1778,) in a nulla situated within the limits of the village of Moosgoopee and the hamlets of Goojgunhutee and Jakunhutee, of the Gokak Talooka, in the Belgaum Division of the Dharwar Zillah, wilfully, and without any extenuating cause, deprived of life his own wife, Luxmee, aged twenty years, by inflicting six wounds on her person with a sword, in consequence of which she, the said Luxmee, then and there died.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, the following sentence is passed:—

That you, Girya, be taken to the common place of execution in Dharwar, and there be hanged by the neck till you are dead. Subject to the confirmation of the Sudder Foujdaree Adawlut.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the confirmation of the Judges of the Sudder Foujdaree Adawlut, counterpart of my proceedings held in the above case, wherein Girya bin Sidrama has been convicted of murder, and sentenced to death.

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BELGAUM.

Murder.

I have only to remark that the man Appiya, who is said by the prisoner to have been present at the time of the murder, denies it, as well as the charge of intimacy with the prisoner's wife, and he brings witnesses to prove he was employed as a palanquin bearer in another village at the time the prisoner refers to. Considering, however, that the prisoner was condemned on his own confession, I did not think it right to take this evidence.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case the prisoner has pleaded guilty to the murder of his wife, and in his appeal to this Court he adheres to the admission of guilt, only alleging provocation in extenuation,—a plea which, I think, must be admitted as part of his own statement on which he is condemned, to the extent that the crime may be held to have been unpremeditated, and that a sentence of transportation for life will satisfy the ends of justice.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—The prisoner's confession must be taken as a whole. I think that the provocation he received affords sufficient extenuation to admit of our mitigating the sentence to transportation.

Resolution of the Sudder Foujdaree Adawlut.—The conviction confirmed, and prisoner sentenced to transportation for life.

1856 August 13.

KAIRA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Petition of Runchorelal Chotelal to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Kaira, J. R. MORGAN, for Report, on the 2nd July 1856.]

Forgery.

Letter from Runchorelal Chotelal to the Magistrate of Kaira.—On the 23rd May 1856 I took the liberty to address you a communication, preferring a complaint against one Jugjeewun Nursee, an inhabitant of Neriad, Zillah Kaira, for having committed a forgery,

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1856 August 13.

KAIRA.

Forgery.

by tampering with the Inward Register Book for 1853, belonging to the records of the Zemindar of Dakore, with a view to injure me; in reply to which you were pleased to inform me, under date the 5th instant, No. 327, that your Magisterial Court was daily open to *me* and any other parties that required redress or had any complaints to make. Accordingly, I have arrived here, and beg respectfully to lay a formal complaint against the said Jugjeewun Nursee for having tampered with the said records of the Dakore Zemindar, within the limits of the Kaira Magistracy, and trust that, as the accused is a subject of the Kaira Zillah, and as the crime of which he stands accused has been committed within the limits of your Magistracy, you will be pleased to cause the said person to attend before you and answer for the accusation, as provided by Section IX. Regulation XII. of 1827.

I have good reasons to know positively that the Zemindar of Dakore was induced or compelled, by certain intriguing persons, to commit a perjury while giving his statement on solemn affirmation, before Mr. Ashburner, in January 1856, at Dakore, Zillah Kaira, with a view to do me harm. If you will kindly procure and allow me to have a look at the said deposition, I most confidently hope that I shall be able to give you such information as will enable you to make out a distinct charge, and to prove the same with undoubted success.

I have come forward to lay this complaint before you for redress to myself, as well as for the public good; and as the offences which have been brought to your notice in this representation are such as are cognisable by you according to the Regulations, I hope you will be pleased to adopt the necessary measures to carry on the investigation into the matter, and afford me such assistance as a strict regard to truth and justice may permit.

* * * * * * *

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1856 August 13. — KAIRA. — Forgery.

The orders of Government to Major Wallace, to make inquiries regarding the conduct of myself or of any other parties, should not, I humbly presume, prevent you from taking notice of the offences which appear to have been committed by the subjects of your Magistracy within your jurisdiction with a view to injure me. Major Wallace might have brought to the notice of Government some accusation or insinuation against me or others, and Government might have consequently given him permission to inquire into the matter; but this circumstance should not, I humbly think, exempt from punishment the parties who have committed acts of a penal nature, within the limits of the Kaira Zillah, to injure me.

Reply from the Magistrate to the Petitioner.—The petitioner is informed that the Magistrate, after hearing what he had to say, declines to make inquiry into the matter as set forth in his letter, for the reasons given to the petitioner on the 12th instant.

The matter regarding which petitioner complains is connected with an inquiry made by Major Wallace, the Political Agent in the Rewa Kanta, by order of Government, regarding the Dufturs of the Police Zemindar of Dakore having been tampered with. The petitioner is therefore referred to Major Wallace, should he have any representations to make on the subject, as it was before this Officer the inquiry has been made.

Petition of Runchorelal Chotelal to the Sudder Foujdaree Adawlut.—[Praying for an Order to the Magistrate of Kaira to make the inquiry alluded to in his letter to that Officer.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are requested to report upon the matter set forth in the accompanying petition, presented to this Court by Runchorelal Chotelal, returning this Precept duly executed, or show good and sufficient

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KAIRA.

Forgery.

reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning this Precept duly executed, the Magistrate of Kaira has the honour to transmit the following report:—

The petitioner, Runchorelal Chotelal, was the Duftur-dar in the Office of the Political Agent in the Rewa Kanta, and, in consequence of misconduct, has been dismissed Government employ, and declared unfit to be again employed in any way. (Circular No. 3301, of 26th June 1856, in the Political Department.)

The inquiry into the different charges brought against this person was conducted by the Political Agent; and in this inquiry the petitioner appears to question the correctness of the statements of different persons who gave evidence in the case before Major Wallace, the Political Agent, and desires that the Magistrate make inquiry into the matter. Considering that the original inquiry took place before the Political Agent, and that the petitioner had full power of making any representation he might wish to the Political Agent, the Magistrate is of opinion that he cannot interfere in any way in a case decided by order of Government by the Political Agent.

In fact, were the Magistrate to make such inquiry as the petitioner wishes, it would be virtually making inquiry into a matter already decided by competent authority, and would be, the Magistrate is of opinion, very inexpedient, and contrary to procedure.

The petitioner, if he finds himself aggrieved in any way by the decision come to by the Political Agent in his case, and has cause for calling in question the evidence or documents produced upon his trial before the

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KAIRA.

Forgery.

Political Agent, the Magistrate is of opinion he should seek redress from that Authority, or appeal to Government direct; and that petitioner should be thus informed.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate is to be informed that it is not competent to him to decline to inquire into an accusation of crime committed within his jurisdiction, it resting with him to dismiss the charge should it turn out, for any sufficient reasons, not to be tangible.

1856 August 13.

KHANDEISH.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Notice issued by the Magistrate of Khandeish, S. MANSFIELD, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 18th July 1856.]

Notice by a Magistrate.

Notice.—Whereas it has been found that the roads and lanes of the village of —— are not kept in a cleanly state, accumulations of filth, &c. exist everywhere, and combustible matters are kept up in places exposed to danger, and many other objectionable practices prevail, so as to cause nuisance and damage to the public, and though accidents do actually take place, yet the people show no disposition to abandon their practices: therefore, with the view of preventing these, the following rules are made, agreeably to Regulation XII. of 1827, Section XIX., for the information and guidance of those concerned:—

Every occupant of a house must clean daily the road in front of his house, and keep the filthy water of the drains from coming on the road at all.

Every occupant of a house must make side gutters along the road opposite to his house to the depth of one cubit, in order that the rain-water may not make the

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KHANDEISH.

Notice by a Magistrate.

road muddy; everybody must clear out his gutters every four or five months, so as they should appear distinct.

No person shall ease himself on the road, or permit children to do so; every one must resort to a deserted place at a distance to obey the calls of nature, or to a place out of the village which is not much frequented by the public, or must use such a place for that purpose as the Police Amuldar may point out.

No person shall, without the permission (of the Magistrate), build steps, verandahs, 'otas,' &c. to the impediment of the public thoroughfares; and if such buildings are erected they will be at once removed, and the Magistrate will not listen to any excuse whatever.

No person shall keep hay or other combustible matter on the premises, or in a place situated so as to be liable to accidents.

No person shall erect new hay 'chuppers' adjoining or between the large expensive buildings, for such chuppers, if fired, will cause heavy and serious loss of property; and, therefore, to guard against this, a place of security, as the Police Amuldar may point out, may be made use of for new chuppers, if any must be erected. Those that already exist will not be removed by compulsory measures, but care must be taken in future cases.

No corpse of an animal shall be allowed to lie on the road, or by the side of the road. The Mhars should be made to remove it to such a distance as the public will not be annoyed.

No person shall make accumulation of filth, &c. near his house, likely to cause nuisance to others.

Where there is a river, no person shall spoil its water by using it for washing, dyeing, &c. at the point where people resort to take drinking water; and the same rule should be observed with reference to wells with steps, as well as those without steps.

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This notice shall have its effect from —— ; and it is hereby notified, that any infringement of the rules laid down above will be treated as an offence, or breach of the Magistrate's Order, agreeably to the Regulations.

1856 August 13.

KHANDEISH.

Notice by a Magistrate.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the approval of the Judges of the Sudder Foujdaree Adawlut, a copy, with translation in English, of a Notice issued by me to the villagers in this Zillah, regarding the cleanliness of villages, &c.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—These being general rules, the Magistrate had better publish them without the last paragraph, and if he finds that they are disregarded, he had better publish such parts of them as relate to the particular village or town in it with the last paragraph, and send that Proclamation down for approval. There are parts of this not applicable to every village, and I had rather not sanction so general a Proclamation; it is too much like laying a trap.

W. E. Frere, Puisne Judge.

Minute by Mr. Harrison.—I would record this Proclamation.

W. H. Harrison, Puisne Judge.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge.

Minute by Mr. Keays.—I concur with the view taken of this Proclamation by Mr. Frere.

R. Keays, Puisne Judge.

Final Resolution of the Sudder Foujdaree Adawlut.—These being general rules, the Magistrate had better publish them without the last paragraph, and if he finds that they are disregarded, he had better publish such parts of them as relate to the particular village or town in it, with the last paragraph, and send that Proclamation down for approval. There are parts of this not applicable to every village, and the Court would rather not sanction so general a Proclamation.

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1856 August 13.

BELGAUM.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 38 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Third Assistant Magistrate of Belgaum, G. W. ELLIOT, on the 28th March 1856. Tried by the Session Judge, A. W. JONES, on the 2nd, 3rd, 16th, 20th, and 23rd June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Murder; and Attempt to Commit Murder.

Prisoner.—Moogoota wulud Burreemea, Mussulman, aged 25.

Charge.—Murder (Regulation XIV. Section XXVI. Clause 1st, A. D. 1827); in having, on Sunday night, the 17th February 1856, (corresponding with Magh Shood 12th, Shuké 1777,) in the village of Tigdolee, in the Beedee Talooka, in the Belgaum Division of the Dharwar Zillah, without justifiable or extenuating cause, wounded with a sword, on the face and other parts of the body, one Dyamaka kom Ninguna, of the same village, from the effects of which wounds she, the said Dyamaka, then and there died.

And also with attempt to commit murder (Regulation XIV. Section XXVI. Clause 1st, and Section I. Clause 2nd); in having, in the same village, and in the same night, followed Yellee kom Dyamaka (the daughter of the abovementioned Dyamaka, whom he had already wounded), and, in front of the house of one Moodkapa, purposely, and without justifiable cause, attempted to deprive her of life, by wounding her with the same sword in the face and stomach and other parts of her body.

The prisoner pleads not guilty to both charges.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—It appears that the prisoner kept a Muratha woman in the village of Tigdolee, and that some time in January last he took her with him to Kittoor. While there, however, they seem to have quarrelled, and as the woman's mother also wished her to return home to Tigdolee, she did

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BELGAUM.

Murder; and Attempt to Commit Murder.

so; and in her evidence she (the complainant) deposes that from that time she gave up her intimacy with the prisoner. Some days after this, however, on a Sunday night (17th February), at about 9 o'clock, he came to the back of their house and pushed his way into it at the back door, and then attacked and pursued the complainant's mother, who had tried to escape from him by running out of the front door; directly after which, the complainant says that she heard her mother crying out more than once, "He is striking me." She goes on to state that then she also began screaming, on which the prisoner came back into the house and attacked her, and struck her on the head with his sword, but that she managed to get away from him, and to run off out of the house for some distance, till she tumbled and fell down opposite one of their neighbours' houses, when the prisoner wounded her twice with his sword, so severely that she fainted, and neither heard nor saw anything more, until, on recovering, she found her relations around her.

The witness Bheemrow deposes that he was walking out in the village on the Sunday night in question, and that, hearing screams, he turned towards the direction whence they appeared to come, and at last saw in the moonlight a woman lying on the ground, and a man striking at her with a sword, and that he went up to try and seize him, but the man, on hearing his voice, made off. As two Shetsundees, however, were coming up in the opposite direction, he managed to catch him up, and seize him and take away his sword, and the three together then took him to the Police Patel and gave him into custody.

The size and nature of the wounds on the complainant leave no doubt that the prisoner would have killed her had he not been interrupted; and the Inquest Report on her mother, which was proved before the Court, shows that that unfortunate woman was murdered in the most

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BELGAUM.

Murder; and Attempt to Commit Murder.

savage way, one of her legs and one of her hands having been so nearly cut off as that they only hung by the skin.

The evidence of the complainant, and the scars still visible upon her, with that of the witness Bheemrow, is sufficient to show that the prisoner did make the attempt to murder her with which he is charged.

The evidence that the prisoner murdered the deceased Dyamaka consists of that of the complainant, whose deposition on the point has been described above; of that of the two neighbours, whose houses are close to hers, and who depose that they saw the prisoner running after the complainant from the direction of the house of the deceased on the night in question; of that of the Police Patel, who shows that he went to the place where the deceased was lying dead, and found there the sheath before the Court, which he identified, and which fits the sword, which the witness Bheemrow identified before the Court as having been taken by him from the prisoner that night. It is also deposed to by the Police Patel and the witness Bheemrow, that the prisoner on that night admitted that he had wounded both the complainant and her mother.

Now all the depositions in this case were taken on the 18th February, the day after these crimes were committed, and there is every reason, therefore, to give them the fullest credit. But in addition to this, it is shown that the prisoner confessed before the District Police Officer of Kittoor, also on the 18th February, and this confession was proved before the Court to have been given voluntarily; and considering how it is corroborated in all its details, as to the attempt to murder and the murder, by the evidence in the case, the Session Judge has no doubt that it is true; and the prisoner is therefore convicted of both the crimes with which he is charged, under Regulation XIV. Section XXVI. Clause 1st, A. D. 1827:

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BELGAUM.

Murder; and Attempt to Commit Murder.

with murder; in having, on Sunday night, the 17th February 1856, (corresponding with Magh Shood 12th, Shuké 1777,) in the village of Tigdolee, in the Beedee Talooka, in the Belgaum Division of the Dharwar Zillah, without justifiable or extenuating cause, wounded with a sword, on the face and other parts of the body, one Dyamaka kom Ninguna, of the same village, from the effects of which wounds she, the said Dyamaka, then and there died; and, under Regulation XIV. Section XXVI. Clause 1st, and Section I. Clause 2nd, with attempt to commit murder; in having, in the same village, and in the same night, followed Yellee kom Dyamaka (the daughter of the abovementioned Dyamaka, whom he had already wounded), and, in front of the house of one Moodkapa, purposely, and without justifiable cause, attempted to deprive her of life, by wounding her with the same sword in the face and stomach and other parts of her body.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, the following sentence is passed:—

That you, Moogoota wulud Burreemea, be taken to the common place of execution, and there be hanged by the neck till you are dead. Subject to the confirmation of the Sudder Foujdaree Adawlut.

* * * * * * *

The Session Judge is of opinion that, when the Assistant Magistrate found the prisoner no longer adhered to the confession he had made before the District Police Officer, he should have taken care that all the evidence bearing on the prosecution was sent up to the Sessions Court.

The Session Judge is of opinion that it would be politic to give some reward to the witness Bheemrow, who interfered to protect the complainant and to arrest

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BELGAUM.

Murder; and Attempt to Commit Murder.

the prisoner, as such conduct is not very common among Natives.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence confirmed.

1856
August 13.

AHMEDABAD.

Proclamation by a Magistrate.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Proclamation issued by the Magistrate of Ahmedabad, J. W. HADOW, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 9th May 1856.]

Extract from the Hoozoor Deputy Magistrate's Proceedings.—On the above evidence, and the confession of the prisoner, the charge of robbery by force is proved against him. The crime of robbing infants of their ornaments is a growing evil, notwithstanding the repeated injunction of the Magisterial Authorities issued to the public, pointing out the danger of decorating children, and allowing them to go at large unprotected, and thus endangering their lives by the cupidity of evil-designed persons of the prisoner's stamp. Such an offence against the public is deserving of severe punishment. The Deputy Magistrate having found the prisoner Dyaram Umerchund guilty of the charge of robbery by force, as set forth in the indictment, sentences him to suffer six (6) months' imprisonment with hard labour, under Clause 3rd, Section XXXVII. Regulation XIV. of 1827; and further that the aforesaid prisoner, at the expiration of his sentence, be remanded to the Magistrate's Office, for precautionary measures being taken for his future good conduct, under Section XXV. Regulation XII. of 1827.

Proclamation.—Since the receipt of the Court of Sudder Foujdaree Adawlut's Circular Order dated 27th June 1839, Proclamation had been issued every year, and orders repeated by this Department, prohibiting the

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1856 August 13.

AHMEDABAD.

Proclamation by a Magistrate.

practice of allowing children decorated with ornaments to run about unprotected in towns and villages. These have failed in producing the desired effect, as several cases have occurred of children having been murdered for the sake of their ornaments. It is, therefore, notified to all persons, that from the date of this Proclamation, parents, or relations who may be entrusted with the charge of children, are required to discontinue the practice of allowing them to run about in the streets decorated with ornaments, without any person to protect or look after them. Any person or persons neglecting or disobeying this Injunction will be punished according to law. Dated this 9th day of May 1856.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—In forwarding an extract from the proceedings held before the Hoozoor Deputy Magistrate, Mr. Jordan, in the case of prisoner Dyaram Umerchund, I have the honour to state, that as repeated Injunctions, and the ordinary Proclamations that have been issued prohibiting the practice referred to, have failed in producing the desired effect, I am respectfully of opinion that more stringent measures should be adopted; and would, therefore, solicit the permission of the Judges to issue the Proclamation, translation of which I beg to forward for their approval.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—Before giving any order on this subject, the Court request the Magistrate to inform them how many cases have occurred in each year, since the Proclamation was issued in 1839, of children being murdered for the sake of their ornaments in the Ahmedabad Collectorate, and what proportion these bear to the murders for other causes committed during the same period in that Collectorate.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In execution of this Precept, the

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1856 August 13.

Ahmedabad.

Proclamation by a Magistrate.

Magistrate of Ahmedabad has the honour to forward the statement called for in the extract of the Court's proceedings, which accompanied this Precept.

Statement showing the number of Cases that have occurred since the year 1839, *of Children being Murdered for the sake of their Ornaments, and the proportion those bear to the Murders for other causes committed from that period in the Zillah of Ahmedabad.*

Years.	Murder of Children for the sake of their Ornaments.	Murder for other causes.	Average proportion the former bear to the latter per cent.	Remarks.
1839	6	28	$21\frac{3}{7}$	
1840	5	37	$13\frac{19}{37}$	
1841	3	33	$9\frac{1}{11}$	
1842	..	25	..	
1843	..	31	..	
1844	2	32	$6\frac{1}{4}$	
1845	1	24	$4\frac{1}{6}$	
1846	..	29	..	
1847	4	27	$14\frac{22}{27}$	
1848	1	31	$3\frac{7}{31}$	
1849	..	34	..	
1850	..	27	..	
1851	1	30	$3\frac{1}{3}$	
1852	..	33	..	
1853	1	29	$3\frac{13}{29}$	
1854	2	29	$6\frac{26}{29}$	
1855	..	26	..	

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate, in his Proclamation, says that several cases have occurred of children being murdered for the sake of their ornaments, and that the Proclamation of 1839 has failed in producing the desired effect; but in neither of these assertions do the Court find the Magistrate is borne out.

The Return shows that since 1839 there have been on an average 29·70 murders committed in each year; while the number of murders of children for the sake of

their ornaments has only been on the average of 1·53; and during the last eight years there have only been five children murdered for the sake of their ornaments; so it cannot be said that several cases have occurred.

1856 August 13.

AHMEDABAD.

Proclamation by a Magistrate.

The Court, moreover, do not think that the effect of issuing the Proclamation will be good. If a man knows that he is liable to be punished for putting ornaments on his child he will not complain when his child is robbed; and the Court fear that the only remedy likely to be effectual would be, to declare all ornaments stolen from children, when recovered, confiscated, and there would then be no reason why those robbed should fear to complain, for the robber would be punished although the property would not be recovered by the party robbed. The Court must forbid the issue of the Proclamation.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

1856 August 20.

POONA.

[Case No. 29 of the Calendar of the Poona Sessions Court for 1856. Committed by the Deputy Magistrate, NANA MOROJEE, on the 6th March 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 22nd and 23rd April, and 16th and 20th May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Prisoner.—Eshwuntrao Ramchundra Prudhan, Kayusth Purbhoo, aged 30.

Misconduct as an Officer on the Establishment of the Inam Commissioner.

Charge.—Misconduct as an Officer on the establishment of the Inam Commissioner (Act XI. of 1852, Section VI.); in that, under different dates, from 1st September 1853 to 15th December 1853, whilst employed as an English writer in the Office of Mr. Charles James Manson, Inam Commissioner at Poona, you misconducted yourself as set forth in the following counts.

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August 20.

POONA.

Misconduct as an Officer on the Establishment of the Inam Commissioner.

1st.—You communicated to one Bhaoo Saheb, Agent of the Kudum Banday family, information from the said Inam Commissioner's Records, and other circumstances connected with an important case affecting the interests of that family, the case being then under reference to Mr. Manson from Government, and your position as an English writer enabling you to become acquainted with the progress of the investigation and final recommendation to Government.

2nd.—For communicating the aforesaid information, and also, under the false pretence that you could influence the decision to be passed in the case, you were in treaty with the abovementioned Bhaoo Saheb to receive a bribe of Rs. 500.

3rd.—You proposed to distribute, in promoting the interests of the said Banday family, a portion of the above sum of Rs. 500 in bribes to certain Karkoons attached to the Poona Duftur Office.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with misconduct as a Clerk in the Office of the Inam Commissioner, and pleads not guilty.

It appears, that having access to the English Records (see the evidence of Mr. Stewart, No. 13), he communicated to the Agent of the parties concerned information relating to an important case under reference to the Inam Commissioner by Government, and that he further was in treaty to receive a bribe of Rs. 500, under the pretence of influencing the final decision in the case. (See the letters recorded from No. 3 to No. 7.)

The case in question was that of the Kudum Banday family, and related to two villages in Khandeish which had been attached on the death of Govindrao Kudum Banday in 1849, and which his son Bulwuntrao Kudum sought to have continued in Inam to him. His agent, Anundrao Girmajee, states that he went on this business to Khandalla, where the Inam Commissioner's Office

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then was, and there became acquainted with the prisoner; and that after he had given in a written statement of the circumstances of the case, as he was about to return to Khandeish, he asked the prisoner to keep him informed of what was going on with reference to it, promising, when it was settled, to present him with a 'shéla pagota.'

The result was, that he received from the prisoner the letters recorded from No. 3 to No. 7, keeping him fully informed of all that took place regarding the case, and urging him to send Rs. 500, a portion of which he proposed expending upon two Karkoons in the Poona Duftür Office.

These letters the prisoner, before the Police, fully admitted having written, and, although he now denies this, his statement is proved by three witnesses (Nos. 9, 10, and 11) to have been freely and voluntarily made, without force or compulsion, promises or threats; and it is fully corroborated by the evidence of the complainant Anundrao, who positively affirms that they were written to him by the prisoner; by the evidence of Mr. Stewart (No. 13), who deposes that the prisoner, as a Clerk in the Office, had access to the whole of the correspondence in the case; by the contents of the letters themselves, which show that they were written by some one connected with the Office; and by the evidence of Mr. Hearn (No. 14), which shows that, having got the prisoner to write a private letter for him in a feigned hand, the writing of it exactly corresponds with that of the letters from No. 3 to No. 7; that, although it is not the practice in writing private Murathee letters, the lines of some of these letters have evidently been ruled, and that the ink used for them is English and not Murathee,—both these lastmentioned circumstances tending to show that the letters were written by a writer in an English Office.

The prisoner, in his defence, states that he was induced to admit his confession before the late Foujdar of Poona,

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not because any attempt was made to induce him to do so, but because, knowing that Mr. Spiers was said to be in the habit of exercising tyranny against prisoners, he was afraid; and he further calls witnesses who state that the writing of the letters No. 3 to No. 7 is not the same as that of the letter (Magistrate's No. 15) said to have been written by him in a feigned hand at Mr. Hearn's request.

Of these witnesses, one states that, excepting No. 4, all the other letters appear to have had the lines in them ruled; another says that only Nos. 7 and 15 appear to have been ruled; and a third that none of them appear to have been ruled; and they all say that the ink used does not appear to them to be English.

The Session Judge, however, having carefully inspected the letters, entertains no doubt that the lines in some of them have been ruled. He is also fully of opinion that the ink used is English and not Murathee, and finds, on a comparison of the letter in a feigned hand, written at Mr. Hearn's request with letter No. 3, that the writing exactly corresponds, not only in its general character, but also in the individual form of the letters.

Under the above circumstances, therefore, entertaining no doubt of the prisoner's guilt, he is convicted of misconduct as an Officer on the establishment of the Inam Commissioner; in having, under different dates, from the 1st September 1853 to 15th December 1853, whilst employed as an English writer in the Office of Mr. C. J. Manson, Inam Commissoner at Poona, misconducted himself as set forth in the indictment. And after maturely considering the nature of the offence committed, and the punishment provided for the same by Section VI. Act XI. of 1852, the following sentence is passed:—

That you, Eshwuntrao Ramchundra Prudhan, be imprisoned for one (1) year, without labour, and pay a fine of five hundred (500) rupees, or be further imprisoned, without labour, for one (1) year.

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W. E. Frere, Puisne Judge.

Petition of Eshwuntrao Ramchundra to the Sudder Foujdaree Adawlut.—[Praying that his case might be inquired into, and the sentence passed on him annulled.]

In the Sudder Foujdaree Adawlut.; *Minute by Mr. Frere.*—The petitioner has been convicted by the Session Judge of Poona of misconduct as an Officer belonging to the establishment of the Inam Commissioner, in three instances:—

1*st.*—Communicating information from the Records of the Office.

2*nd.*—Treating for a bribe of Rs. 500, under the pretence that he could influence the decision.

3*rd.*—Proposing to distribute the bribes among the Karkoons attached to the Poona Duftur Office.

It can hardly, I think, be urged—I am sure it cannot be maintained—that communicating even a particle of information that has been obtained in the course of official duty is to be held as criminal misconduct in a person holding official employment. It must be admitted that such misconduct is susceptible of different degrees of guilt. It may be a matter of perfect indifference, except as a breach of official rule; it may be reprehensible and worthy of censure, culpable and meriting punishment departmentally, or it may be criminal and deserving heavy punishment. I cannot look upon the information said to be given by Eshwuntrao in this case as amounting to the last, which alone should be made the subject of a trial before the Session Judge. None of the information given appears to me to be of a nature to embarrass the proceedings of either Government or the Inam Commissioner; and if it does not amount to that, either from its importance or from some other cause, I think it should be punished departmentally rather than criminally. I therefore would not have made that a separate article of charge against the prisoner, but have referred to it only as showing the means he used to obtain his end—a bribe of Rs. 500, his treat-

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ing for which forms the subject of the second instance of misconduct with which he is charged.

That this charge is proved against the prisoner it is impossible to deny, for his own letters (Nos. 3 to 7 inclusive), which he has admitted in his confession (No. 12), are incontrovertible proofs against him. But were it not for that confession, or had I any reason to believe that the confession had been extorted, the charge, though apparently susceptible of proof, must have fallen to the ground.

The petitioner contends that he confessed, not because he was compelled to do so, but for fear lest he should be compelled, though he urges no ground for his fears, save the Foujdar's general character. I cannot allow that, however, any weight, when urged by a man who claims our consideration because he has been a long time in Government employ, and is acquainted with the Rules and Regulations. He must have known that the Foujdar dared not maltreat a man who knew what his rights were, and that, even if the Foujdar did forget himself so far, there were others to whom he could appeal. If it was possible for us always to discriminate between those who urge this plea with truth, and those who falsely urge it, I would allow the plea; but it is the safest course that all people should know that if ill-treated they have redress, if they will complain, but that a plea that they were afraid they might be ill-treated cannot be allowed any weight.

The way in which the bribe was to be distributed, which is made the third instance of misconduct, is, I think, perfectly superfluous. This misconduct was, in my opinion, treating for a bribe; how he said it was his intention to appropriate the money when received can be of no importance.

The second instance of the charge being proved, and the punishment not being in my opinion excessive, I would reject the petition.

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Having expressed my disapproval of the way in which the trial has been conducted, I ought to point out to the Session Judge that Anundrao not knowing Eshwuntrao's handwriting, his having received the letters Nos. 3 to 8 inclusive as coming from Eshwuntrao was not sufficient to prove them. Anundrao should have been examined to show the answers he sent, and that the letters purporting to come from Eshwuntrao were evidently replies to those he sent. He should also have shown that he sent them to Eshwuntrao through the post, and that they were so directed that it was manifestly improbable that they could have been delivered to any Eshwuntrao but the man with whom he had had conversation at Khandalla—the prisoner. Anundrao having proved that, the letters might then have been read and recorded, otherwise they ought not to have been recorded until after Eshwuntrao's confession.

The third instance is that the money was to be distributed to the Karkoons in the Poona Duftur Office. The letters show that they were Captain Gordon's Karkoons who were to receive this money. It should have been elicited from the witnesses that Captain Gordon's Karkoons were the Karkoons in the Poona Duftur Office.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—Two of the instances in this charge should not, in my opinion, have formed the subject of a criminal prosecution against the prisoner. The question then is, whether the third instance, viz. that of treating with Anundrao, the Agent of the Kudum Banday Family, for a bribe of Rs. 500, is proved or not. The evidence consists of two letters, recorded Nos. 3 and 7, which it is alleged that he wrote, and which he also admits having written in his confession. Regarding the evidence to prove these letters I have some doubts. The letters which he wrote in a feigned hand at the desire of Mr. Hearn, and which are said to correspond with exhibits Nos. 3 and 7, were obtained in

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an underhand sort of way, and I feel a reluctance to give it the weight allowed it by the trying authority; and as for the confession, I think there may be a great deal of truth in what he says about his having given it through fear, a defence which he set up immediately he was brought before Mr. Nana Morojee, and has adhered to throughout. I confess I have doubts about the case, and as the prisoner is entitled to the benefit of those doubts, I would annul the conviction and sentence.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—If the prisoner wrote the letters to the witness Anundrao produced by that person, I think there can be no doubt that he negotiated for a bribe in return for pretended services, in exerting a supposed influence with the Inam Commissioner in a matter in his hands for disposal, and that he is liable to punishment criminally for misconduct. I do not find grounds for questioning the conclusion come to by the Session Judge that the prisoner did write the letters in question. He admits in his confession to the Foujdar that he did so, and, in his appeal to the Court, refers to his statement to the Deputy Magistrate as accounting for his admission. Before the Deputy Magistrate, I observe that he says he admitted the writing, both before Captain Gordon and before the Foujdar, through fear. But it was not alleged that he had any grounds to fear ill-usage from Captain Gordon; and as to the ex-Foujdar's character for severity, the prisoner is not an ignorant ryot, and such a plea cannot be allowed weight from one who must have been fully aware of the effect of his statement. I would reject the appeal.

Final Resolution of the Sudder Foujdaree Adawlut.—Petition rejected.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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KAIRA.

[Case No. 28 of the Criminal Return of the Magistrate of Kaira for 1855. Tried by the Deputy Magistrate, W. F. A. SPRY, on the 5th December 1855. Reviewed by the Magistrate, J. R. MORGAN, on the 8th January 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Prisoners.—No. 1, Ooma Bungul, Kolee, aged 25.
2, Bhaeejee Detar, Kolee, aged 25.
3, Aloo Heemutt, Mussulman Rawneea, aged 30.
4, Gullab Jalum, Kolee, aged 22.

Robbery by Night, with Force.

Charge.—Prisoners Nos. 1, 2, and 3 with robbery by night, with force (under Section XXXVII. Clause 3rd, Regulation XIV. of 1827); in that they did, on Ashwin Wud 11th, Sumvut 1911, (corresponding with 5th November 1855,) in the night-time, in the limits of Khatruj village, Talooka Matur, Zillah Kaira, enter the house of one Raeejee Kesowdas, and did with force take away from off the person of Vukut, the wife of Becher Wussun, silver and golden ornaments of the stated value of Rs. 61.

Prisoner No. 4 is charged, under Section I. Clause 5th of the above Regulation, with aiding and abetting in the above crime; in that he did, while the prisoners Nos. 1, 2, and 3 were engaged in the robbery, stand at the gate of the 'mut,' to give notice of the approach of strangers.

W. F. A. Spry, Deputy Magistrate.

Finding and Sentence by the Deputy Magistrate.—The prisoners are charged with robbery by night, with force; to which they plead not guilty.

The evidence for the prosecution clearly proves that the prisoners came to the mut, situated in the limits of Khatruj village of the Matur Talooka, on the night of the 5th November 1855, and that

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Nos. 1, 2, and 3 entered the house of Raeejee Kesowdas (witness No. 3), and took by force, from off the person of the prosecutrix, an armlet, a neck-ring, and a pair of anklets, property of the stated value of Rs. 61, and that prisoner No. 4 stood at the gate of the mut while the others were engaged in the robbery, to give warning of the approach of strangers. The Deputy Magistrate therefore considers the prisoners guilty of the charge preferred against them, and convicts them of the same; and sentences them (subject to the Magistrate's confirmation) to suffer one (1) year's imprisonment with hard labour, agreeably to Section XXXVII. Clause 3rd, and Section I. Clause 5th, Regulation XIV. of 1827.

* * * * * * * *

The evidence and papers in this case disclose grave neglect of duty on the part of the Mookhees of Khatruj and Mehmoodabad, and receipt of bribes, and, therefore, charges should be framed against these parties; but as the Deputy Magistrate is about to proceed to Ahmedabad on duty, the trial of these cases must be deferred until his return.

J. R. Morgan, Magistrate.

Reviewed by the Magistrate.—From a perusal of the evidence recorded in this case, the charge appears to have been clearly made out, and the Magistrate therefore confirms the conviction and sentence.

From the evidence that has been recorded, it appears that the Mookhees and Tulatees have been concerned in suppressing this case; and the Magistrate therefore directs that most searching inquiry be instituted, and that on conclusion of the inquiry the result be reported to him.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to certify the papers and proceedings, together with your report upon the matter set forth in the accompanying petition from

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Ooma Bungul, Bhaeejee Detar, Aloo Heemutt, and Gullab Jalum, convicts in the Kaira Jail, which accompanied the Register of Petitions handed up by you on the 16th ultimo, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—With reference to the petition accompanying this Precept, the Magistrate of Kaira begs to report as follows :—

It appears that on the night of the 11th of Ashwin, Sumvut 1911, (corresponding with the 5th of November 1855,) at about 9 P. M., some thieves entered the house of one Raeejee Kesowdas, in the village of Khatruj, in the Matur Talooka, and forcibly robbed a woman, by name Vukut, the wife of Becher Wussun, of the gold and silver ornaments she had on her person, valued at Rs. 61.

On intelligence of the above robbery having been conveyed the next morning to the Mookhee of the above-mentioned village of Khatruj, this Officer wrote (for assistance) to the neighbouring Police Thana at Mehmoodabad, and, on the arrival of three of the Police Sepoys from thence, had four of the villagers of Makooa (a village close to that in which the robbery had occurred) apprehended and brought to the 'chowree' at Khatruj; and, on being shown to the woman that had been robbed, she at once recognised Ooma Bungul, Bhaeejee Detar, Aloo Heemutt, and Gullab Jalum as being the robbers.

Notwithstanding this being the case, the Mookhee of Khatruj and other Government Officers, from corrupt motives, discharged the parties suspected, and

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endeavoured to suppress this crime. Shortly after this, the Agewans of this village brought this misconduct of the Police to the notice of the Superintendent of Police, and on this, further investigation was made, and the four suspected parties above alluded to were tried before the Hoozoor Deputy Magistrate, and three of them, viz. prisoners No. 1 (Ooma Bungul), No. 2 (Bhaeejee Detar), and No. 3 (Aloo Heemutt) convicted of robbery with force, and the fourth, Gullab Jalum, of aiding and abetting therein, and sentenced each to a year's imprisonment, with hard labour. (Clause 3rd Section XXXVII., and Clause 5th Section I., Regulation XIV. of 1827.) This sentence was confirmed on the 8th of January 1856 by the Magistrate, the charge appearing to him to have been clearly proved against the prisoners.

The Government Officers connected with this case were subsequently tried and punished, and the whole of the papers and proceedings held on their trial were submitted on the 5th May 1856, No. 270, to the Court of Sudder Foujdaree Adawlut, on an appeal from Kewul Pitambur, and returned with the Court's Precept No. 583, dated 25th ultimo.

In their present petition to the Sudder Foujdaree Adawlut, the prisoners in the robbery case seem to lay much stress on the fact of their discharge by the Police when first apprehended. This ground of their appeal is, however, sufficiently answered by the fact of the Police Officers who at first discharged them having been convicted of and punished for misconduct, as noticed above.

The proceedings held in this case are so full, and the case appears to be so clearly proved, that the Magistrate deems it unnecessary to make any further remarks on the subject.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—I see no cause for interference. There has been

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a great deal recorded in the case which is not evidence, arising, probably, from the misconduct of the Mookhee of Khatruj and the other Government servants.

The Deputy Magistrate's attention should be drawn to Clause 2nd, Section XXXVI. Regulation XIV. A. D. 1827, which makes Gullab a principal in the robbery, not a mere accessary to it.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—I consider the charge of robbery in this case clearly proved, and I would reject the petition.

The shameful misconduct of the Police Patels and Government servants, in endeavouring to suppress the charge against these prisoners, having formed the subject of a separate investigation, it does not appear necessary to notice it further here.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause for interference. They, however, would direct the Magistrate's attention to Clause 2nd, Section XXXVI. Regulation XIV. A. D. 1827, which makes Gullab a principal in the robbery, not a mere accessary to it.

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AHMEDABAD.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 77 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the Third Assistant Magistrate, H. B. LINDSAY, on the 29th May 1856. Tried by the Session Judge, A. B. WARDEN, on the 14th and 24th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Wilful Murder.

Prisoner.—Bechur Budajee, Kolee, aged 14.

Charge.—Wilful murder; in having, on or about Friday night, the 12th April 1856, (corresponding with Chuitru Shood 7th, Sumvut 1912,) within the limits of

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Wilful Murder.

Chapra, Hamlet of Egiola, Purgunna Purantej, Zillah Ahmedabad, wilfully, and without justifiable cause, deprived of life Bhugwan Hureeram, who had come to the house of Kooma, mother of prisoner, for the purpose of having criminal intercourse with her. The prisoner, on finding the said Bhugwan Hureeram seated on his mother's cot, attacked him with a sword, and inflicted wounds on his head and arm, from the effects of which the said Bhugwan died on the 2nd May 1856; prisoner thereby rendering himself amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—As the prisoner at the bar pleaded guilty to the charge of wilful murder, there was no necessity for taking any evidence; but owing to the prisoner's extreme youth, and the reason assigned by him for committing the deed, the Court was induced to go through the evidence, to see whether there were any extenuating circumstances. From the evidence of the prisoner's mother (witness No. 6), it is ascertained that the deceased came to her house on the night in question for the purpose of having sexual intercourse with her, and her son happening to come home, and catching them together, wounded her paramour, the deceased, severely, who died a few days afterwards from the effects of the wounds. The deceased in his declaration, recorded as No. 10, denied that he had gone to the house of the woman Kooma for the purpose of having sexual intercourse with her. The evidence of the witness Morjee (No. 7) proves that the prisoner in his presence forbade the deceased to come to his house, and threatened to kill him if he did. The deceased being found in the house, and during the night-time, after the above warning, leaves no doubt that the deceased was Kooma's paramour, and visited her for the purpose of having

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sexual intercourse with her; and this opinion is strengthened by her very great reluctance to tell all that had occurred. The prisoner, not only in his own confession, but when called on to plead, said that it was his intention to have murdered his mother also, and then have committed suicide. The prisoner's determination to kill the deceased if he ever came to his house, and his plea of guilty, leave the Court no alternative but to find him guilty of wilful murder; in having, on Friday night, 12th April 1856, within the limits of Chapra, Hamlet of Egiola, Purgunna Purantej, Zillah Ahmedabad, wilfully, and without justifiable cause, deprived of life Bhugwan Hureeram, who had come to the house of Kooma, mother of prisoner, for the purpose of having criminal intercourse with her. After taking into consideration the nature of the offence proved against the prisoner Bechur Budajee, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVI. Clause 4th, of 1827, the sentence of the Court is that you be transported beyond seas for the term of your natural life. The above sentence is subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

In consequence of the prisoner's extreme youth, he being only fourteen years old, certainly not more than fifteen, and the extreme provocation he received, and his motive in committing the deed being to preserve the honour of his family, the Session Judge begs to recommend the prisoner to mercy, in the hope that the Judges of the Sudder Foujdaree Adawlut will pass a lenient sentence in lieu of that which the Session Judge has been obliged to pass. The Session Judge deems it his duty to remark, that it would not be advisable to pardon the prisoner, for there is but little doubt that if he were released at once he would murder his mother.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr.

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Harrison.—In this case it appears that the prisoner, a boy of fourteen years of age, cut down and mortally wounded the deceased, on finding him in his house in the night, either in the act of criminal intercourse with his widowed mother, or under circumstances that left no doubt as to his being there for that purpose. He seems to have warned the deceased not to come to his house, and threatened to kill him if he did.

The prisoner has, in my opinion, been rightly convicted of murder. The circumstances, however, are such as would render appropriate as lenient a sentence as the law permits, for, looking to the state of society in which the parties lived, the provocation must be held to be of an extreme character.

I would sentence the prisoner to a term of solitary confinement. The extenuating circumstances should not have been entered in the charge; and the prisoner's plea to a simple charge of murder might well have been entered as not guilty, for his confession did not amount to a plea of guilty of murder. He held the act of slaying the defiler of his mother a righteous act. There would then have been no inconsistency in the Zillah Judge's proceeding with the trial, as he properly did, in my opinion, taking all the evidence available.

R. Keays, Acting Puisne Judge.

Minute by Mr. Keays.—I am of opinion, from the evidence, that the boy, having duly cautioned Bhugwan not to visit at his house, came home on the night in question, and found him, if not in the very act of adultery with his mother, sitting on her cot under circumstances showing that the act had just been committed; and as this provocation was very great, I do not think I should have convicted this boy of murder. I do not think the conviction should be upheld. I would convict of culpable homicide, and sentence to four years' imprisonment, with hard labour.

The Session Judge should be informed that his recom-

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mendation to mercy should have been made in the letter handing the case up for trial.

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Wilful Murder.

W. E. Frere, Puisne Judge.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge.

Minute by Mr. Frere.—Taking the view which my brother Judges have recorded of the facts of this case, that Bechur found the deceased Bhugwan in his house in the night, either in the act of criminal intercourse with his widowed mother, or under circumstances which left no doubt as to his being there for that purpose, I do not consider them sufficiently extenuating so as "to divest the act of so much criminality as would constitute murder." Bechur had threatened Bhugwan before, and his finding him in the house, and under the circumstances proved to my brother Judges' satisfaction, cannot, in my opinion, be looked upon as extenuated by his killing him in the first transport of passion. He suspected the crime, and instead of seeking redress from the constituted Authorities, he waited until he found them in the fact, and then became the avenger of his own wrongs. I therefore agree with Mr. Harrison in thinking the prisoner was rightly convicted of murder.

Final Resolution of the Sudder Foujdaree Adawlut.—The conviction of murder is confirmed.* The prisoner sentenced to one year's solitary confinement, and twenty-five stripes.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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SHOLAPORE.

Restoration of Property produced in Evidence.

[Petition of Yelojee bin Gopaljee to the Sudder Foujdaree Adawlut. Referred to the Session Judge of Sholapore, T. A. COMPTON, for Report, on the 23rd July 1856.]

[For former proceedings in this case, see pages 846 to 848, Vol. V.]

* Mr. Frere withdrew on this confirmation of the conviction, when the other two Judges proceeded to pass sentence.

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SHOLAPORE.

Restoration of Property produced in Evidence.

Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—It is hereby certified to the Sudder Foujdaree Adawlut, that the extract from the Court's proceedings in the case of Yelojee wulud Gopaljee, dated 26th of June, has been received, and the exigence of the same complied with, by the delivery of the property found in his house to the petitioner.

The property would have been delivered to Yelojee at once, had it been in the custody of the Sessions Court; but it was in the house of the complainant, Abajee Raleaskur, who was absent at Akulkote, and on his return from thence, as he refused to restore the lace to Yelojee without an express order on the subject from the Sudder Court, the Session Judge thought it advisable to wait for the receipt of such order, as he was not aware of any Regulation which would authorise his causing Abajee's house to be searched, and the property made over to Yelojee against Abajee's consent.

Resolution of the Sudder Foujdaree Adawlut.—Recorded.

Petition of Yelojee bin Gopaljee to the Sudder Foujdaree Adawlut.—[Praying that the order of the Session Judge of Sholapore, requiring him to give security on the restoration of his property, might be set aside, there being no authority for such a measure.]

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—The Session Judge is to be requested to report, and to state why, if, as alleged, he took the security, he omitted to mention it in his return to the Court's Precept of the 26th June 1856, No. 601.

Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The Session Judge has the honour to report, for the information of the Judges of the Sudder Foujdaree Adawlut, that he took security from the petitioner at the request of Abajee Raleaskur, who stated that he intended to petition the Sudder Court

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regarding the property, and was otherwise unwilling to restore it.

The Session Judge saw nothing unreasonable in this request, and it did not occur to him to notice the circumstance in his answer to the Precept.

The petition is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The security must be cancelled, and the Session Judge informed that it certainly would have been better had he, when making his return, added, "who, at the request of Abajee Raleaskur, has furnished security to restore it, should the Sudder Foujdaree Adawlut reverse their order."

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BROACH.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 1 of the Calendar of the Broach Sessions Court for 1856. Committed by the Assistant Magistrate, J. G. WHITE, on the 15th January 1856. Tried by the Session Judge, H. HEBBERT, on the 26th May 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Murder.

Prisoner.—Amba, Wife of Tikum Nuthoo, Mochee, aged 18.

[See pages 818 to 824, Vol. V., for previous proceedings in this case.]

H. Hebbert, Session Judge.

Return by the Session Judge to a Precept of the Sudder Foujdaree Adawlut.—It is hereby certified to the Sudder Foujdaree Adawlut, that the warrant and extract of proceedings which accompanied this Precept have been duly received, and that a copy of the latter has been forwarded to the Magistrate of Broach, in modification of the remarks made by the Session Judge to him in connection with the case in question. At the same time the Session Judge takes the opportunity to observe that he was led to make those remarks from a consideration that Regulation XIII. of 1827, Section XXXVIII.

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1856 August 20.

BROACH.

Murder.

Clause 2nd, militated against the Civil Surgeon's report in question being recorded as evidence against the prisoner.

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—The Session Judge is to be informed that he was right in his supposition, if it was that the Civil Surgeon's report could not be recorded as evidence on the trial before the Session Judge; but as there is nothing in the Regulations to oblige the Magistrate, in a case he does not intend to decide himself, to examine the Civil Surgeon, and as, for the reasons mentioned in the Court's proceedings of the 26th ultimo, it is better dispensed with, he was not right in communicating the remarks he did on the trial to the Magistrate.

Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—It is hereby certified to the Court of Sudder Foujdaree Adawlut, that the extract of proceedings accompanying this Precept has been duly received. With reference thereto, the Session Judge begs to offer the following explanation:—

The Session Judge understands the opinion of the Court to be, that a Civil Surgeon's report ought not to be recorded as evidence against a prisoner before the Sessions Court. Of this there can be no doubt; but the Session Judge would submit further, that under Regulation XII. of 1827, Section XIV., neither ought it to be so before the Magisterial Authorities, the rules of evidence being in both instances the same. In the case in question, however, this was done; and this irregularity, as he deemed it, was what the Session Judge pointed out and commented on.

The Session Judge did not say, nor did he mean to imply, in his remarks in question, that the Magistrate was bound to examine the Civil Surgeon on oath in every case, or in any case; he left that to the Magistrate's own judgment. He meant what is above set

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forth, that if the opinion of the Civil Surgeon was taken and recorded as evidence against the prisoner, it should be so on oath.

1856 August 20.

Broach.

Murder.

It has occurred to the Session Judge that his remarks have been misunderstood, and therefore he avails himself of this opportunity to explain them.

Resolution of the Sudder Foujdaree Adawlut.—The Session Judge of Surat is to be informed, that if the Civil Surgeon's evidence was necessary in a case to be decided and disposed of finally in the Magisterial Department, it would be necessary and proper that it should be taken on oath, but that the report of the Civil Surgeon in cases for the Sessions Court is sufficient; because, if necessary, the Session Judge can call on the Civil Surgeon to give his evidence in regular form.

The Magistrate is only required to take sufficient evidence to satisfy himself that there is a case for the Sessions, though he ought to ascertain where all the evidence likely to be required by the Session Judge is to be found; and the Session Judge is not confined to taking only the evidence of those examined by the Magistrate, but is at liberty to call for any other witnesses he may think necessary to support either the prosecution or defence.

Present, { William Edward Frere, Robert Keays, } Puisne Judges.

1856 August 20.

Sholapore.

[Reference from the Magistrate of Sholapore, W. A. Goldfinch, requesting sanction of the Sudder Foujdaree Adawlut for the further detention of Apia wulud Vittoo for one year.]

Forfeiture of Security Bond.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—As required by Section XXVII. Regulation XII. of 1827, I have the honour to report that one Apia wulud Vittoo, Mang, of Moujé and Talooka Marah, was, under date the 13th August

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1856. August 20.

SHOLAPORE.

Forfeiture of Security Bond.

1855, required to furnish a security, in the sum of Rs. 50, for two years.

He was arrested on suspicion of having committed a daring robbery in the house of one Neelachund wulud Jowarchund, in the town of Marah, when property to the value of Rs. 892 was carried off. The proof was not sufficient to convict him, but the grounds of suspicion were very strong, and therefore, taking into consideration his previous bad character, it was considered necessary to call upon him to furnish security as above. This he was unable to do, and was therefore sent to Jail on the 13th August 1855. Thus the year has nearly expired, and I now request the authority of the Judges for his further detention for the space of one year from that date.

According to the Court's Circular No. 312, of 17th December 1844, this report should have been made long ago; but the Session Judge's communication is only dated 5th, and was received in this Office on the 7th instant.

The year will expire before the Judge's authority for the man's further detention can be received; meantime, on his discharge, if he cannot furnish the required security, he will be placed under the surveillance of the Police.

Resolution of the Sudder Foujdaree Adawlut.—The Court sanction the detention of the prisoner for another year.

1856 August 20.

KHANDEISH.

Seizure of Papers.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Petition of Huree Damodhur to the Sudder Foujdaree Adawlut; referred to the Magistrate of Khandeish, S. MANSFIELD, for Report, on the 2nd July 1856.]

Petition of Huree Damodhur to the Sudder Foujdaree Adawlut.—[Praying for redress, the Magistrate having ordered the seizure of his papers without any cause.]

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1856 August 20.

KHANDEISH.

Seizure of Papers.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Huree Damodhur, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate begs to state that the petitioner had been accused of forging several papers, by means of which he obtained a decree in his favour in the Civil Court.

From an investigation made by the Magistrate, he was satisfied that the papers had been forged by the petitioner, Huree Damodhur, and he applied to the Court for them, and he was informed that the originals had been returned to the petitioner, who had replaced them by copies.

The defendant in the suit then made a deposition, on solemn affirmation, stating that he believed the forged papers were in Huree Damodhur's house, and requested it might be searched. This was done by the Police Karkoon in the presence of the petitioner's nephews and the Village Officers. The forged documents were not discovered, but the village accounts relating to forty-five villages were found, and taken and deposited in the Kutcheree, being public recordsand belonging to Government. No other papers or property of any kind were taken out of the house.

Resolution of the Sudder Foujdaree Adawlut.—The petitioner not being present for the third time, his petition is struck off.

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August 20.

POONA.

Petitioner referred to Civil Action.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Petition of Vitoo bin Sudasew to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Poona, D. DAVIDSON, for Report, on the 23rd July 1856.]

Petition of Vitoo bin Sudasew to the Sudder Foujdaree Adawlut.—[Praying for an order to the Magistrate of Poona to make inquiry into his complaint, which had been dismissed without inquiry.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to certify the papers and proceedings, together with your report upon the matter set forth in the accompanying petition, presented to this Court by Vitoo bin Sudasew, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—Petitioner charged Shunkur Narain Koleh and Naro Ramchunder Garporay that they received his grain in mortgage or pledge, value Rs. 430, and appropriated the money to themselves. He has no receipt for the grain. Naro states that he received the grain from Shunkur and paid him for it, and Shunkur states that he has brought the money thus received from Naro to petitioner's credit in his books, and that petitioner is his debtor. Petitioner says Shunkur is not his creditor, but his Karkoon. Under these circumstances, the Assistant Magistrate's decision, referring petitioner to the Civil Court against one or both of the above parties, was, on appeal, confirmed by the Magistrate.

The papers in the case are forwarded.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoner is rejected.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

1856 August 27.

AHMEDNUGGUR.

[Petition of Anajee Vitul to the Sudder Foujdaree Adawlut. Referred to the Session Judge of Ahmednuggur, J. W. WOODCOCK, for Report, on the 23rd July 1856.]

Review of a Case by the Session Judge.

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—The Session Judge to be requested to review the case and report the result.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The extract from the Court's proceedings which accompanied this Precept has been duly received, and in exigence thereof the Session Judge begs to report that he has reviewed the prisoner's case, and is of opinion that the conviction and sentence were correct, and that no interference is called for. The Session Judge may here remark that the plea of insanity, set up before the Acting Assistant Session Judge by prisoner, entirely failed, nor did he prove that he was not in the village on the night in question.

The petition is herewith returned, as directed.

Resolution of the Sudder Foujdaree Adawlut.—The petitioner is to be told that the Session Judge has reviewed his case, and that there is no cause for the Court to interfere.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

1856 August 27.

DHARWAR.

[Case No. 78 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Acting Second Assistant Magistrate, H. N. B. ERSKINE, on the 21st June 1856. Tried by the Session Judge, A. W. JONES, on the 12th, 17th, and 18th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Culpable Homicide.

Prisoners.—No. 1, Khalikhan wulud Alikhan, Mussulman, aged 35.

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DHARWAR.

Culpable Homicide.

A. W. Jones, Session Judge.

Prisoners.—No. 2, Mudar bin Soobanjee, Sadur, aged 40.
3, Suntoo bin Yelapa, Sadur, aged 30.

Charge.—Murder (Regulation XIV. Section XXVI. Clause 1st, of A. D. 1827); in having, on the evening of Monday, 9th June 1856, (corresponding with Jésht Shood 7th, Shuké 1778,) near the village of Nowloor, in the Dharwar Talooka, of the Dharwar Division and Zillah, struck one Gudgya bin Ayana on the face and head with an umbrella, and with the handle of a bullock-whip, from the effects of which blows the said Gudgya died on the following morning, that is on the 10th June.

Finding and Sentence by the Sessions Court.—In this case the prisoners are charged with murder, and plead not guilty.

It appears that on Monday the 9th June, a man, who had been staying at his father-in-law's house in Sungolee, was on his way home to Gamunguty with his wife, and that in the evening, after sunset, they (the witnesses Nos. 7 and 8) reached the road from Hooblee to Dharwar, where it passes close to the village of Nowloor.

The man had with him four fowls. Just as they came to this road they were met by three men, one riding on a bullock and the other two on foot, and the latter tried to take the fowls away from witness No. 7, the man on the bullock urging them on; but just then another person came up from the 'tulao,' which is close by, with a water-jar on his head, and he interfered and remonstrated with these men for taking away "poor people's fowls"; on which, both the witnesses depose, the man on the bullock dismounted, and, with his two companions, set upon and beat the man who had thus interfered in their favour till he fell, and then ran off towards Dharwar. While this was passing, the witnesses Nos. 7 and 8 had been crying out for assistance, and at last two persons ran out of the village of Nowloor, and on hearing from

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DHARWAR.

Culpable Homicide.

them what had occurred, pursued the three men, and captured them and brought them back; and these three men are shown to be the prisoners before the Court. By this time the Police Patel and others from the village had arrived, and the wounded man was then lifted up and carried to the Dhurumsala, while the prisoners were put in the Chowree. The matter was then reported to the Police Amuldar, who arrived in the course of the night; and, as the man who had been wounded died next morning, an Inquest was held upon the body, and the depositions of all parties concerned, and the statements of the prisoners, were taken during the day. The Inquest Report was proved before the Court, and shows that the man, whose name was Gudgya, of Nowloor, had, amongst other bruises, a hole in the forehead, and another in the socket of one of the eyes, which had apparently been caused by the thrust of the point of an umbrella, or stick; and it is stated, as the opinion of the members of the Inquest, that the man had been killed by these blows; of which, considering the circumstances of the case, there can be no doubt.

The whip is a piece of bamboo, about two feet long, with a rope lash; but the umbrella stick is of hollow iron, with a point at the end, and would make a very dangerous weapon, and a thrust with it would certainly make just such wounds as killed the deceased.

The witnesses Nos. 7 and 8 say that they cannot tell with what the prisoners struck the deceased, and it is not easy to make out who used the umbrella or the whip. The witnesses Nos. 9 and 10 say the umbrella was in the hands of the prisoner No. 2, while the Police Patel says the prisoner No. 1 (who is a gentleman's butler) had the umbrella in his hand when given over to him; and each prisoner in his statement declares he had nothing in his hand, and says that the whip and umbrella were with the other two prisoners.

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DHARWAR.

Culpable Homicide.

The Session Judge thinks, however, this is not material, for it is proved that the prisoners attempted to take away some fowls from two travellers by violence, and that when another man interfered to protect these travellers, they (the prisoners) set upon and beat him till he fell, and then ran off. They were, therefore, undoubtedly all three assisting in an unlawful act, the perpetration of which was accompanied with the death of a human being; and therefore they must all three be considered as equally responsible for the consequences.

The defence made for the prisoners is, that they did not know the deceased before, and could therefore have had no ill-will against him; and that they were, moreover, all three so drunk that they did not know what they did.

But drunkenness is not an excuse for crime, and though it may be allowed that there was no enmity between the parties, and that the act was entirely unpremeditated, the Session Judge does not see in this any reason to doubt that the crime with which the prisoners are charged is fully made out against them, within the meaning of Section XXVI. Clause 1st, of Regulation XIV.

And they are accordingly all three convicted of murder; in having, on the evening of Monday, 9th June 1856, (corresponding with Jésht Shood 7th, Shuké 1778,) near the village of Nowloor, in the Dharwar Talooka, of the Dharwar Division and Zillah, struck one Gudgya bin Ayana on the face and head with an umbrella and with the handle of a bullock whip, from the effects of which blows he, the said Gudgya, died on the following morning, *i. e.* on the 10th June.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. Section XXVI. Clause 4th, the following sentence is passed :—That you, Khalikhan wulud Alikhan, Mudar

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wulud Soobanjee, and Suntoo bin Yelapa, be transported across the seas for the term of your natural life. Subject to the confirmation of the Sudder Foujdaree Adawlut. 1856 August 27. **Dharwar.** Culpable Homicide.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the confirmation of the Judges of the Sudder Foujdaree Adawlut, counterpart of my proceedings in the above case, wherein Khalikhan, Mudar, and Suntoo have been convicted of murder, and sentenced each to transportation.

I regret to say that I did not observe, until too late for the prosecution (although it was mentioned in the Police Amuldar's report to the Assistant Magistrate), that the head of the deceased had been sent for examination to the Civil Surgeon, and it was not mentioned in the Assistant Magistrate's proceedings. There is no doubt about the case; but the Civil Surgeon would, I find, have proved that there was a small round hole right through the bone of the forehead, just above the junction of the two eyebrows.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—I do not think that there can be any doubt as to the facts of this case, in which it is proved that the deceased came by his death from the unlawful acts of the prisoners, who assaulted him. The plea is drunkenness, which is not an excuse or extenuation.

The fatal assault occurred in a sudden quarrel, provoked by the prisoners. The parties were unknown to each other, and their meeting accidental.

Under these circumstances, I would convict the prisoners of culpable homicide, and sentence them to a term of imprisonment.

W. E. Frere, Puisne Judge.

Minute by Mr. Frere.—I agree with Mr. Harrison that the crime proved is culpable homicide, for it is impossible to gather from the evidence how the wounds were inflicted; the broken metal umbrella stick, penetrating

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1856 August 27. — DHARWAR. — Culpable Homicide.

where it did the eye and the forehead, would have caused death without having been used with any intent for that purpose. I regret that the Civil Surgeon was not examined.

Resolution of the Sudder Foujdaree Adawlut.—The prisoners are convicted of culpable homicide, and sentenced to five years' imprisonment with hard labour.

1856 August 27. — KAIRA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 78 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the Deputy Magistrate, W. F. A. SPRY, on the 2nd June 1856. Tried by the Session Judge, A. B. WARDEN, on the 30th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Wilful Perjury.

Prisoner.—Dajee Narayen, Koonbee, aged 30.

Charge.—Wilful perjury; in having, on Thursday, 15th May 1856, (corresponding with Wuishak Shood 11th, Sumvut 1912,) in the Court of Adawlut at Ahmedabad, wilfully and falsely stated, before Mr. A. B. Warden, Session Judge of Ahmedabad, on solemn affirmation, whilst giving evidence in the case of Mukun Becher and others, charged with the murder of his sister Hurka, that the 'kuntees,' or necklaces, were removed from the neck of the deceased Hurka by the strings being untied, and not broken, and that he knew that the strings had not been broken, for, when the kuntees, or necklaces, were brought to the village Khota by Rawaneea Unao, the strings of the said kuntees were quite perfect, and had not been broken. The prisoner's object in denying that the strings of the kuntees had been broken was to make it appear that the mark on the neck of his sister Hurka was not caused by the force used in breaking the strings after she was dead, but

had been caused by violence used towards her while alive by her husband and father-in-law, whom he (Dajee) accused of having strangled her; prisoner thereby rendering himself amenable to the provisions of Regulation XIV. Section XVI. Clause 1st, of 1827, and Act V. of 1840.

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KAIRA.

Wilful Perjury.

The prisoner pleads not guilty.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—Prisoner is charged with wilful perjury, under the following circumstances:—The prisoner preferred an accusation against his sister's husband and father-in-law, of their having strangled his sister, Hurka, in a field in the limits of their village. From the evidence recorded in the murder case, it appeared that there was a mark of a thin rope round the neck of the deceased Hurka. Two witnesses came forward, who professed to have seen the woman Hurka strangled; but there were certain facts connected with their evidence which threw doubt on their assertions; and evidence was also adduced by the prisoners in that case proving that these witnesses' statements were false. In the course of the trial the Court discovered that the necklaces which the deceased was in the habit of wearing had been removed from her neck after she was dead, and that they had been removed by breaking the strings of the necklaces; as the strings were thick, it occurred to the Court that the mark seen on the throat of the deceased might have been caused by the forcible removal of the necklaces after death. The Court, therefore, subjected the prisoner in this case, who was the prosecutor in the other case, to a further examination, and asked him whether the necklaces had been removed before or after death. The prisoner hesitated for a long time, and the Court warned him to speak the truth, for the lives of the prisoners were at stake, they having been accused of wilful murder. At length he admitted that he had heard that the

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KAIRA.

Wilful Perjury.

mother-in-law of the deceased Hurka had removed the necklaces from Hurka's neck after the corpse had been brought to the entrance of the village. The Court then asked him whether the mark on Hurka's throat, which had led to a suspicion of her having been strangled, might not have been caused by the forcible removal of the necklaces after death. The prisoner at once, in the most positive and decided manner, said that the necklaces had been removed after death by the strings being *untied* and not *broken*; and when the broken strings were shown to him, he would have it that they had been untied and not broken. The prisoner, throughout the whole of the time that he was being examined as a witness, exhibited great *animus* against the prisoners, and wanted to make out that one of the prisoners, who was the deceased Hurka's husband, used to quarrel with her; whereas prisoner's brother, who was also examined as a witness, scouted the idea of his sister having been strangled by her husband and father-in-law. The Court deems it necessary to remark that, in the murder case, three or four beads, corresponding with those of one of the necklaces, were discovered on the spot where the deceased Hurka was said to have been strangled. Now, as the necklaces were not removed till after the corpse was brought to the village, the beads could not have been dropped in the field, but must have been taken there by some one. In this case the Court has only thought it necessary to take the evidence of the woman (witness No. 6) who removed the necklaces from the neck of the corpse after it was brought to the village, and of the Rawaneea (witness No. 7), who, in the presence of the prisoner, gave them to the Mookhee and Havildar. The necklaces themselves, without any other evidence, too clearly establish the falsity of prisoner's assertions. The Court, therefore, finds the prisoner guilty of wilful perjury; in having, on Thursday, 15th May 1856,

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(corresponding with Wuishak Shood 11th, Sumvut 1912,) in the Court of Adawlut at Ahmedabad, wilfully and falsely stated, before Mr. A. B. Warden, Session Judge of Ahmedabad, on solemn affirmation, whilst giving evidence in the case of Mukun Becher and others, charged with the murder of his sister Hurka, "that the kuntees, or necklaces, were removed from the neck of the deceased Hurka by the strings being untied and not broken, and that he knew that the strings had not been broken, for, when the kuntees, or necklaces, were brought to the village Khote by Rawaneea Unao, the strings of the said kuntees were quite perfect, and had not been broken." The prisoner's object in denying that the strings of the kuntees had been broken was to make it appear that the mark on the neck of his sister Hurka was not caused by the force used in breaking the strings after she was dead, but had been caused by violence used towards her while alive by her husband and father-in-law, whom he (Dajee) accused of having strangled her. (Regulation XIV. Section XVI. of 1827, and Act V. of 1840.)

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KAIRA.

Wilful Perjury.

The crime of perjury is of frequent occurrence in this Zillah, and the case in which the prisoner committed the perjury was one of a most serious character, for it was one of life and death; and it was only by a long and tedious investigation that facts rebutting the false accusation against the accused were discovered. The Court, while it considers itself bound to make an example of you, prisoner Dajee Narayen, in order to deter others, yet at the same time makes allowances, owing to the deceased being your sister. The sentence of the Court, therefore, is, that you be imprisoned and kept to hard labour for two years. The sentence is, however, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The prisoner in this case is charged with

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Wilful Perjury.

perjury; in having deposed, in a trial before the Session Judge of Ahmedabad of certain persons for the murder of his sister, that the strings of the kuntees, worn by his sister at the time of her death, had been untied and not broken, with the object of showing that a mark, alleged to have appeared on the deceased's neck, was not caused by breaking off the kuntees, but by strangulation.

I do not find that the prisoner's deposition contains the statement alleged. He said first that the kuntees were not broken off but untied. "When brought to the Khote by the Rawaneea, the strings were not broken. Of the three kuntees shown to me, the one made of glass beads, and that made of coral and gold beads, are in the same state as when brought to the Khote by the Rawaneea; the third kuntee was coiled up, therefore I cannot state whether it is in the same state as it was then. The gold and coral kuntee I saw opened out, and therefore I said it had been untied, but did not examine the string, and it was in the same broken state that it is now. If it had been broken into separate pieces, I should have said that it was broken; but as it was not so, I made the above statement. But now the kuntee appears to be broken."

Now the above must be taken as a whole; and although it exhibits prevarication, it does not contain the positive assertion in the charge that the strings of the kuntees were broken: there is an admission that he did not examine the strings, and further on that two of the kuntees were in the same state; so that the Court could judge if they were broken. I find the Rawaneea (witness No. 7) only speaks to two kuntees, and before the Deputy Magistrate he only spoke to one. In fact, there seems a withdrawal of the assertion that the kuntees were not broken. The prisoner should be acquitted and discharged.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—I can see no reason to interfere in this case, and would confirm the conviction and sentence.

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Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

1856 August 27.

KAIRA.

Wilful Perjury.

W. E. Frere, Puisne Judge.

Minute by Mr. Frere.—The Session Judge says that the prisoner Dajee, during the whole time that he was examined as a witness, exhibited great *animus* against the prisoners; but it appears to me natural that he should have done so. He certainly did say that the strings of the kuntees were not broken, but this' statement is qualified and entirely corrected when his attention is drawn to the state in which the strings are. I am not prepared to say that nothing can be termed perjury which is explained by a second answer; but I think the Session Judge was extreme in sending Dajee to be committed on a charge of perjury, for, when shown how repugnant the facts were to the statement he made, he explained what the impression on his mind was, and admitted his mistake, and ought then, I think, to have been dismissed, with a caution to be more careful in future. I therefore cannot say that I consider the prisoner has wilfully (for that reqnires more pertinacity and deliberation than appears in this case) made a false statement upon oath, and I would therefore acquit him, and order his discharge.

Final Resolution of the Sudder Foujdaree Adawlut.—The prisoner is acquitted, and to be discharged.

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DHARWAR.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 82 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the First Assistant Magistrate, S. ST. J. GORDON, on the 28th June 1856. Tried by the Session Judge, A. W. JONES, on the 24th June and 25th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Culpable Homicide.

Prisoner.—Balya bin Raya, Jain, aged 28.

Charge.—Wilful murder (Regulation XIV. Section XXVI. Clause 1st, A. D. 1827); in that, in the village of Husoor, in the Bunkapoor Talooka, in the Dharwar Division and Zillah, in the house of Burma bin Nagapa, he (the prisoner) wilfully, and without justifiable or extenuating cause, did, with a heavy wooden stick called 'moossul,' armed with iron, hit one Lugmee, the wife of Tijapa, a blow behind the right ear, whereof she then and there expired, on Saturday the 31st May 1856, at noon (corresponding with Wuishak Wud 12th, Shuké 1778).

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with wilful murder, and pleads not guilty.

The prisoner and the complainant are brothers-in-law, and live next to each other in the village of Husoor; and on Saturday the 31st May, the complainant was heard by the prisoner abusing his wife and her (and consequently the prisoner's) mother. On this he came into the complainant's house, and, telling him that whatever he might say to his wife he had no right to abuse her mother, took up the grain-pounder which he found there and struck him a violent blow with it on the head. The mark of this blow is still visible, the wound having scarcely yet healed. As he did this, however, a sister of complainant's, named Lugmee, came in and interfered, and she probably may have abused him also (as stated in the prisoner's

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account of the matter); on which the prisoner, using the moossul as a dart, struck her so severely with the iron-shod end of it just under the ear, that she died in a very few minutes after. The prisoner, on seeing this, made off.

An Inquest was held on the body, and the Report proved before the Court shows that there was the mark of a severe blow on her head under the ear, and that she had died therefrom; and a blow in such a place from such a weapon (it is a long heavy piece of wood, weighing 5 lbs. and shod with iron at one end) would certainly suffice to cause death.

The prisoner, though he made off at first, and was absent several days, appears to have returned to the village of his own accord, and to have given himself up to the first person he met.

His statement of the circumstances of the case has been nearly the same throughout, though before the First Assistant Magistrate there seems to be a faint attempt to deny that he struck the deceased; as, however, he admits the statement before the Police Amuldar, as well as that before the Assistant Magistrate, and his defence is that there was no ill-will between himself and the deceased, he must be considered to admit having struck the blow by which Lugmee was killed. As the moossul was picked up by the prisoner in the complainant's house, and the complainant allows that he knows of no ill-will between the prisoner and deceased, the crime must be admitted to have been entirely unpremeditated. But this moossul was so heavy, that to strike a person on the head with the iron-armed end of it was almost certain death in the manner in which it was used, which was much more dangerous than giving a downright blow with it, and as the person struck was a woman, who was interfering on behalf of a brother, the Session Judge considers he can only convict the prisoner as

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charged; and he is accordingly convicted of murder; in that, in the village of Husoor, in the Bunkapoor Talooka, in the Dharwar Division and Zillah, in the house of Bhurma bin Nagapa, he (the prisoner) wilfully, and without justifiable or extenuating cause, did, with a heavy wooden stick (called moossul) armed with iron, hit one Lugmee, the wife of Tijapa, a blow on the head near the right ear, whereof she then and there expired, on Saturday the 31st May 1856 (corresponding with Wuishak Wud 12th, Shuké 1778).

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, the following sentence is passed :—

That you, Balya bin Raya, be transported across the seas for the term of your natural life. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—As it is clear that Balya had no intention of killing Lugmee, and that her death was purely accidental, the crime is reduced to culpable homicide. I wish the Session Judge had been able better to ascertain how the blow was inflicted. He says the pestle was thrust at deceased. The Assistant Magistrate describes it as a back-handed blow. A very slight blow or thrust in the spot where this fell would be fatal, and it would have been very desirable that the Session Judge should have ascertained, as nearly as he could, whether it was a back-handed blow or a thrust, and at what distance it was delivered.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—In this case it is clear that the fatal blow by which deceased lost her life was caused by the hand of the prisoner, who, at the sudden provocation of abuse, struck her with a moossul.

It is evident from the Inquest Report that the wound was a slight one, and the fatal consequences probably arose

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from its position; but that the push or poke took effect just below the ear was probably accidental; and, I think, under all the circumstances, that the crime is culpable homicide, of which I would convict.

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Culpable Homicide.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is found guilty of culpable homicide, and sentenced to three months' solitary confinement.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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DHARWAR.

[Reference from the Magistrate of Dharwar, T. OGILVY, requesting sanction of the Sudder Foujdaree Adawlut for the further detention of Nela bin Bermuna.]

Forfeiture of Security Bond.

Decision by the Second Assistant Magistrate.—Nela bin Bermuna, aged twenty-three, Hulwur Begur, inhabitant of Kagwulee, in the Kode Talooka, has been on three occasions convicted of cattle-stealing, and is a man of generally bad repute; he is therefore required to give security for the space of three (3) years in the person of two sureties, respectable persons, inhabitants of the Dharwar Zillah, each to the extent of twenty-five (25) rupees, or, in default, to undergo three (3) months' imprisonment, that he will abstain from the offences enumerated in Sections XXXVII. and XXXIX. of Regulation XIV. of 1827. In case of prisoner not producing the required security, he is to be imprisoned till the occasion be past. (Regulation XIV. of 1827, Sections XXIV. and XXVII.)

T. Ogilvy, Magistrate.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—With reference to your letter to the Session Judge of Dharwar, dated the 12th December 1853, No. 2966, I have the honour to transmit the proceedings held by my late Assistant, J. R. Arthur, Esq., in which the prisoner, Nela bin

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Bermuna, was required to give two securities, in the sum of twenty-eight rupees each, that he would abstain for the space of three years, from the 26th December last, from the commission of certain offences, and to request, as the prisoner is in confinement in default of furnishing the security demanded, that you will obtain from the Judges of the Sudder Foujdaree Adawlut authority for the further detention of the prisoner until the occasion be past.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to state whether some other more lenient measure might not be had recourse to in regard to this prisoner.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In return to the within Precept, it is hereby certified to the Judges of the Sudder Foujdaree Adawlut, that the extract from their proceedings has been duly received, and that the prisoner, Nela bin Bermuna, has been released on his own recognisance, in a penalty of fifty rupees, commutable to three months' imprisonment, that he will abstain from committing robbery for three years.

Resolution of the Sudder Foujdaree Adawlut.—Recorded.

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TANNA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Petition of Shaboodeen wulud Shaik Moheedeen to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Tanna, E. C. JONES, for Report, on the 7th August 1856.]

Assistant Magistrate's Decision confirmed.

Petition of Shaboodeen wulud Shaik Moheedeen.—[Praying that the sentence passed against him might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to

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the Magistrate.—The Magistrate is to be requested to review the case and report the result, and state why no answer was returned to this prisoner's petition of the 14th May 1856.

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TANNA.

Assistant Magistrate's Decision confirmed.

E. C. Jones, Magistrate.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate has the honour to return this Precept duly executed within the prescribed time, and to report that the case in question was reviewed by him on appeal, and the decision of the Assistant confirmed.

The Magistrate begs to state further, that an answer was sent to the prisoner on the 29th May last, viz. the day on which the appeal was decided. It appears that the delay in conveying the answer to the prisoner was owing to an oversight on the part of the Nazir of the Court.

The petition is returned.

Resolution of the Sudder Foujdaree Adawlut.—The petitioner is to be informed that the Magistrate has reviewed his case, and the Court see no reason to interfere; and the Session Judge is to be requested to report whether the Magistrate's answer has been communicated to the prisoner or not.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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BELGAUM.

[Case No. 74 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the First Assistant Magistrate, W. H. HAVELOCK, on the 10th June 1856. Tried by the Session Judge, A. W. JONES, on the 8th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Prisoner.—Hunma, Son of Bunnowa, Dher, aged 40.

Attempt to Commit Murder.

Charge.—Attempt to commit murder (Regulation XIV. Section XXVI. Clause 1st, and Section I. Clause 2nd, A. D. 1827); in having, on the night of Tuesday,

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Attempt to Commit Murder.

A. W. Jones, Session Judge.

the 15th April 1856, (corresponding with Chuitru Shood 11th, Shuké 1778,) in the front room of the house of Kunka Dher, in the village of Nundwadgee, in the Hoondgoond Talooka, in the Belgaum Division of the Dharwar Zillah, with intent to kill, wounded with a razor on the back of her neck his wife Ningee, and with the same razor on the throat a man named Mullapa.

Finding and Sentence by the Sessions Court.—The prisoner is charged with attempt to commit murder, and pleads guilty.

It appears that the prisoner's wife had once or twice excited his suspicions as to her conduct with one Mullapa, and at last, on Tuesday the 15th April, he observed her get up in the middle of the night and go to the house where this man was living ; he followed in a short time and found them together ; and though he does not say he caught them in the act of adultery, there could be no doubt that it was with the intention of committing adultery that they had met at such a time ; and being very naturally roused to great anger at this, he attacked first one and then the other with a razor which he had taken with him for the purpose, and wounded Mullapa severely on the throat, and his wife on the back of the neck.

The prisoner pleads guilty to this, and admits before the Court the confession he had made before the Police and Magisterial Authorities, detailing the assault, and allowing that he had intended to kill them both. The Session Judge has no course left, therefore, but to convict the prisoner of the attempt to commit murder as charged, leaving it to the superior Court to decide on the amount of punishment which may be necessary, considering the very great provocation under which the assault was committed.

The prisoner is accordingly convicted of attempt to commit murder; in having, on the night of Tuesday, the 15th April 1856, (corresponding with Chuitru Shood

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11th, Shuké 1778,) in the front room of the house of Kunka Dher, in the village of Nundwadgee, in the Hoondgoond Talooka, in the Belgaum Division of the Dharwar Zillah, with intent to kill, wounded with a razor on the back of her neck his wife Ningee, and with the same razor on the throat a man named Mullapa.

And after considering the nature of the offence committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, and Section I. Clause 2nd, the following sentence is passed :—That you, Hunma, son of Bunnowa, be transported across the seas for the term of your natural life. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. E. Frere,
Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—Had Hunma killed his wife and Mullapa, he would have been guilty of murder, for the law only considers this provocation so grievous that it cannot be borne in the *first* transport of passion. In this case, Hunma shows he had reason to suspect his wife before ; and that, on the night in question, she left him and the two children asleep in the yard, and went and slept in the house, from which he suspected that she would go to Mullapa, and he therefore lay down awake, and about 1 or 2 o'clock she got up and went to where Mullapa was sleeping, and twenty minutes after he followed her, and, finding his wife and Mullapa, as he had expected, together, he attempted to murder them. This shows a degree of coolness and deliberation which prevents my looking upon the case as any other but one in which the prisoner himself sought for the provocation, and removes it from amongst those which the law, in consequence of human infirmity, considers entitled to lenient consideration. I would therefore confirm both the conviction and sentence.

Minute by Mr. Keays.—From the prisoner's confession it appears that the prisoner's wife, whom he had

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reason to suspect was carrying on illicit intercourse with Mullapa, left the verandah where she had been sleeping and went to where Mullapa was sleeping in Kunka's house. The prisoner Humna waited for a space of twenty minutes, and then got up and took with him a razor, as he says, with an intention of killing them both, and, finding them together, committed the act which forms the subject of the charge. There certainly is a degree of deliberation and coolness about this which renders it impossible to allow him that consideration to which he would have been entitled by law if he had not of his own accord sought the provocation. I therefore concur with my brother Judge that, had he killed Mullapa and his wife, he would have been guilty of murder, and am prepared to confirm the conviction and sentence.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence confirmed.

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SURAT.

Present, WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, Puisne Judges.

[Case No. 8 of the Criminal Return of the Magistrate of Surat for May 1856. Tried by the Deputy Magistrate, W. M. KELLY, on the 1st, 2nd, 3rd, 5th, and 6th May 1856. Reviewed by the Assistant Magistrate in Charge, C. J. DAVIES, on the 29th May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petitions of the prisoners Dhirujram Tooljaram and Gordhundas Pranvulubdas.]

Falsely Packing Cotton, and fraudulently Offering it for Sale, or Selling the same.

Prisoners.—No. 1, Dhirujram Tooljaram, Bramun Vud Nugra, aged 40.

2, Lukmidas Bhugwan, Nagur Vania, aged 48.

3, Sewchund Tarachund, Savuk Vania, aged 29.

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Prisoners.—No. 4, Gordhundas Pranvulubdas, Vania Dussa Nagur, aged 65.

Charge.—Falsely packing cotton, and fraudulently offering it for sale, or selling the same (Regulation III. of 1829, Section I. Clause 1st); in having, on the 25th, 26th, and 27th April 1856, (corresponding with 5th, 6th, and 7th of Chuitru Wud, Sumvut 1912,) brought and placed near the Decca Bunder, in the city of Surat, and sold, or offered for sale, three cotton bales, weighing 34 maunds and 3¼ seers, containing old and new cotton mixed.

The prisoners plead not guilty.

W. M. Kelly, Deputy Magistrate.

Finding and Sentence by the Deputy Magistrate.—The three bales have been proved to contain cotton mixed of new and old, by the evidence of witnesses No. 20 (Roopalal Dhunlal) and No. 21 (Mullookchund Tarachund), as well as by the informant, Khimchund Vunmallee.

Prisoner No. 7 (Dhirujram) is found to have bought nine bales of cotton from Ruggoo Natha's firm, on his own account, between the 6th and 20th April, as deposed to by Govindbhoy Russikdas (witness No. 12), and found entered in his book; while Dhirujram states that he did not buy it within two months, nor recollects buying any previously. He is also seen, by the evidence of several witnesses, to trade in cotton this year, which he denies, and denies having so much as even a share with any one. He acknowledges having given two bales to Sewchund (prisoner No. 9), who acknowledges having received it on account of a claim of two he had upon *him;* while Dhirujram states he gave them to Sewchund on Gordhundas's account, with whom Sewchund seems to have had no dealings or any claim; neither does he give any satisfactory account as to what he had done with the bad cotton he bought from Ruggoonath Natha. It is, however, proved he sold the two bales to Sewchund.

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Prisoner Lukmidas Bhugwan (No. 8) denies having had anything to do in the business; but it is seen from the evidence that he had the bales in his lot, marked by his number and initials. It is also seen that the bales had been taken out of his lot and given to Sewchund; one of them has his number and initials (લ. ભ. ના. ૨૮૮૯) on it still. Sewchund deposes to the same mark being upon the other two he bought, which has since been defaced. It is seen he had returned two to Dhirujram to be given to Sewchund, and therefore the Deputy Magistrate thinks he can be held responsible for only one bale, which I concur with witnesses Nos. 9 and 16 to be the remaining one of the three or more he purchased from Dhirujram, and were placed at the bunder, ready for exportation and sale. By the memorandum alluded to by witness No. 18, it is seen that Lukmidas had actually passed under his stamp 129 bales on the 26th April 1856.

Prisoner No. 9 (Sewchund Tarachund) had, it appears, the two bales given to him by Dhirujram from the lot belonging to Lukmidas, at the very bunder, ready for exportation, with the intimation that Lukmidas had passed them on his own account by the Kotwal, and which is corroborated by the evidence of the witnesses. He does not, therefore, by any means appear to have kept, or was exporting the bales fraudulently.

Prisoner No. 23 (Gordhundas Pranvulubdas), it can be seen, tries to exculpate Dhirujram, and take all upon his shoulders; but the Deputy Magistrate does not feel justified to place any greater faith upon his statement than that he is an accomplice or partner of prisoner Dhirujram, and, in order to wash away as much of the blame from himself, states that the three bales had been mortgaged to him by Mucca Dulla, a man who is said to have lately died, and that he (Mucca Dulla) had brought these bales to the bunder; and produces two

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little books with the entry of the mortgage; but the transaction is not signed by, nor proved to be in the handwriting of the deceased. The entry, dated 19th March, is also found made nearly at the end of the book; while later entries, of 12th April, are found entered on leaves before it. Moreover, the writing appears to be very recently made, and though I think he had no right to dispose of the bales mortgaged to him, yet his having done so is proved—be that to Dhirujram or Sewchund. I do not think it probable that the bales could have lain at the bunder so long as from previous to the death of Mucca Dulla some fifteen or twenty days ago, as Gordhundas would seem to imply. Gordhundas also states that he desired Dhirujram to give two bales to Sewchund; but from the account book shown by Sewchund no claim of his upon Gordhundas can be found, but his dealings in cotton with Dhirujram is therein substantiated. My conviction is, Dhirujram is master, and Gordhundas his partner, and both have unitedly packed and sold the three bales to Lukmidas, who returned two to be given to Sewchund, and retained the other for exportation and sale.

It also appears from the Kotwal's report that Dhirujram and Lukmidas had been before mixed up in fraudulent transactions, and, it may be added, that the character of these persons in such malpractices is said to be notorious in the city. The Deputy Magistrate is inclined therefrom to suspect the parties of having systematically carried on this kind of frauds for some years back, and many bales had been thus fraudulently exported. He also doubts the absence of Gordhundas from Surat up to the 5th instant, and suspects that it was only to make up matters with his colleagues.

From a careful consideration of the whole, it appears to the Deputy Magistrate that there has been a regular league or combination of the three prisoners in the com-

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mission of the offence, particularly of prisoners Nos. 1 and 4; and, feeling convinced of its being proved against them, passes sentence according to the proportion of guilt, in his opinion, upon each of the prisoners, under Reg. III. of 1829, Sects. I. and II., as follows,—a sentence deemed to be called for, as much for the present offence as to deter others from committing like frauds:—

Prisoner No. 1 (Dhirujram Tooljaram) to suffer five (5) months' ordinary imprisonment, and at the expiration of which to pay a fine of five hundred (500) rupees; in default, to suffer five (5) months' additional imprisonment.

Prisoner No. 2 (Lukmidas Bhugwan) to pay a fine of five hundred (500) rupees; in default, to suffer three (3) months' ordinary imprisonment.

Prisoner No. 3 (Sewchund Tarachund) to be discharged.

Prisoner No. 4 (Gordhundas Pranvulubdas) to suffer five (5) months' ordinary imprisonment, and at the expiration of which to pay a fine of five hundred (500) rupees; in default, to suffer five (5) months' additional imprisonment.

The three falsely packed bales of cotton to be burnt. (Regulation III. of 1829, Section II. Clause 2nd.)

The decision of this case being subject to the confirmation of the Magistrate. (Regulation IV. of 1830, Section III.)

Prisoner No. 2 (Lukmidas Bhugwan), paying the fine imposed upon him, is liberated.

C. J. Davies, Assistant Magistrate in Charge.

Reviewed by the Assistant Magistrate in Charge.—I do not think that it has been established that Lukmidas (prisoner No. 2) was connected directly with the sale of these bales, and I therefore annul his conviction and the sentence passed upon him.

I confirm the conviction and sentence of Dhirujram (prisoner No. 1).

Gordhundas (prisoner No. 4) has chosen to criminate

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himself, and I therefore confirm his conviction and the sentence passed upon him.

The evidence taken previous to the 5th May should have been read over to Gordhundas (prisoner No. 4).* I think Sewchund (No. 3) should have been at once discharged, and examined as a witness.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The question arises here, whether the being concerned in the sale of bales of cotton containing old and new can be held fraudulent mixing and selling under the Act for punishing frauds in cotton dealing, if it is shown that the petitioners were concerned in the sale of bales containing old and new cotton. The cotton brokers called in depose that the old cotton found in the bales in this case was not bad cotton; neither does the purchaser, who was made a prisoner, but eventually acquitted, complain of having been imposed upon. Under these circumstances, I do not consider that the petitioners are liable, and would annul the sentence; for the law under which they have been punished makes penal the "fraudulent mixing of good and bad descriptions of cotton in one bale," not the mixing of descriptions of cotton, both of which are shown to be good.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—The charge against these prisoners appears clearly proved by the evidence. The prisoner Dhirujram, although he denies that he has traded in cotton at all within the last year, is nevertheless proved to have purchased no less than nine bales of cotton within the previous two months from Ragoo Natha's firm for the purposes of trade, and to have sold three bales to Sewchund Tarachund, which are proved to contain old and new cotton, mentioned by the witnesses as bad cotton.

I consider such to be what may be called false packing,

* Had not Gordhundas's statement been a self-criminating one, this omission would have rendered it necessary to annul his conviction.—*Note by Assistant Magistrate.*

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and I would therefore confirm the conviction and sentence.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

Final Resolution of the Sudder Foujdaree Adawlut.—The offences contemplated in Regulation III. A. D. 1829 are, mixing good and bad cotton, and selling the whole fraudulently as good cotton, and mixing dirt, &c. with cotton to add to its weight, and packing it in that state. Now, in this case, even accepting the Deputy Magistrate's opinion that Dhirujram sold the two bales found on the boat to Sewchund, there is no proof that he sold it as good cotton; and, without that proof, Dhirujram cannot be convicted under Section I. Regulation III. A. D. 1829. The same remark applies to Gordhundas: whether he sold the bales to Dhirujram or Sewchund, there is no proof that he sold them as good cotton, and, consequently, no proof of his having committed a breach of the abovequoted enactment. There is no proof in the case of who packed these bales, and, therefore, the offence contemplated in Clause 2nd, Section I. Regulation III. A. D. 1829, cannot have been committed by the petitioners; they must be acquitted and discharged.

It appears from this case, that if an informer sees a bale of what he thinks bad cotton, he goes and informs the Magistrate, or some of his subordinates; and if they find it to be true, they prepare a case against somebody of selling bad cotton for good, or of fraudulently packing cotton. The Court also gather that all cotton brought to the bunder is examined before it is exported. This last must, the Court presume, be done at the request of the parties to whom the cotton belongs; and, as regards the first, the Court would recommend the Magistrate not to waste his time by inquiring into these cases, unless somebody complained that fraud had been practised upon him, or, at any rate, attempted.

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Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges. 1856 August 27.

SHOLAPORE.

[Case No. 42 of the Calendar of the Sholapore Sessions Court for 1856. Committed by the First Assistant Magistrate, J. F. ARMSTRONG, on the 24th June 1856. Tried by the Session Judge, T. A. COMPTON, on the 2nd and 26th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Prisoner.—Ladlesa wulud Mukdoomsa, Mussulman, aged 45. Murder.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, on the night of Friday, the 13th June 1856, (corresponding with Jésht Shood 10th, Shuké 1778, Shukrawar,) in the village of Kulkeree, Talooka Moodebehal, Zillah Sholapore, wilfully, and without justifiable cause, deprived of life his wife Peerma (aged forty years), by strangling her with his hands, and thereby caused her death then and there.

Finding and Sentence by the Sessions Court.—The prisoner pleads not guilty. T. A. Compton, Session Judge.

From the evidence of his eldest daughter, Ameenma (the witness No. 5), aged twenty-two years, it appears that the deceased Peerma was his second wife; that his first wife lives at Hegundodee, in the Sholapore State (Nizam's territories), and that the prisoner went to see her about two months ago; that on the day of his return he had a quarrel with deceased, and she (Ameenma) then saw her (Peerma) throw dust into the air (a sign that she was extremely incensed against her husband, and invoked vengeance and ill-luck upon his head); that at night the prisoner told her (Ameenma) to go out and sleep in the verandah, but without assigning a reason; and that about 4 o'clock in the morning the prisoner came out and told her that her mother had been bitten by a snake or scorpion, and was dead. Shorapoor

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Ameenma adds, that on entering the room she saw her mother stretched out on the bed perfectly dead, and that, on hearing her cries of distress, the prisoner told her he was going away from home, but abandoned his intention when she asked him how she was to account to the neighbours for her mother's death; that she then struck a light and saw the mark of a rope round her mother's throat, and that the body was lying perfectly naked.

She states that she did not hear any struggle or quarrel going on during the night, and that the prisoner and the deceased for the last eighteen months have been on very bad terms.

From the Inquest Report (No. 4), proved by the witnesses Ayapa and Shunkur (Nos. 2 and 3), it appears that there were marks of a rope or string round the deceased's neck, and the members of the 'punchayet' were unquestionably of opinion that the deceased had come to her death by strangulation. In the house of the prisoner, which is stated to be so small that the roof is only three and a half cubits from the ground, a rope was found attached *horizontally* from one beam to another, apparently for the purpose of drying clothes, and *not recently put up*; there was no noose, or running knot, on the rope; and the members of the Court were of opinion that the deceased could not possibly have committed suicide by hanging herself, as the house was so small that the deceased could not stand upright in it; and if she had been suspended from the rope her legs would have been on the ground. They found four slight bruises on the back and shoulders, apparently done in the struggle, but no other marks or signs of violence; and they were of opinion that the deceased had been strangled, and a rope tied tight round her neck, to induce the belief that she had hung herself.

Fukeera (witness No. 6) the prisoner's eldest son, aged sixteen, deposes that his mother used to intrigue with one

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Mudwulapa Soonkud, and that the prisoner was always quarrelling with her on this account, and that before he went to visit his first wife in the Sholapore territory he told the deceased that her conduct was infamous; that on his return (sixteen or seventeen days after) he told Fukeera he was going to build a house at Hegundodee, and asked him if he would live with him, as the deceased and Ameenma had refused to do so; that the deceased Peerma, hearing this conversation, threw dust over herself; and that he (Fukeera) then went away, and did not hear of his mother's death till the next morning, when he came to the house and saw the mark of a rope round her neck.

Fukeera adds, that he has heard the prisoner threaten the deceased that he would take her into the Sholapore territory and *settle her business*, as her conduct was so disgraceful.

Ootala, another son of the prisoner's (witness No. 7), aged twelve years, corroborates the above evidence as to the quarrel, and heard the prisoner threaten to kill the deceased. He was sleeping in the same room with his parents on the night in question, and states that he was awakened in the middle of the night by a rope falling at his feet, and that the prisoner then opened the door and went out, and, returning with Ameenma, they found his mother Peerma quite dead.

The youngest son, Kadir, a boy of six or seven years, who was also sleeping in the room, is such a mere child, that his evidence would hardly be admissible; and he, moreover, declares that he was asleep, and does not know what took place.

The Police Patel of the village, Somapa (witness No. 11), deposes that on questioning the prisoner regarding the cause of his wife's death, he first asserted that she had died from the sting of a scorpion, and when told that this was impossible, declared that she had committed

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suicide; and that, on going to the house, he saw the body lying on the ground, with marks of discoloration as if from a rope round the throat. He corroborates the evidence of the members of the Court of Inquest in every particular, and affirms that he saw the deceased in perfect health only three or four days before her death.

The prisoner fully confessed having strangled his wife before the Joint Police Officer of Toombghee on the 16th June 1856, and again on the following day before the Mahalkuree of Toombghee, alleging as the reason that, for the last eighteen months, the deceased had been intriguing with another man, and giving him the grain which he (prisoner) had earned by labour during famine prices.

Before the First Assistant Magistrate he repudiated this confession, but it is proved by Mudwalaya and Muleshapa (witnesses Nos. 8 and 9) to have been freely and voluntarily made, and the prisoner does not prove that he was beaten or in any way coerced by the Police.

After giving the case the fullest consideration, the Session Judge is impelled to the conclusion that the prisoner's retracted confession has received sufficient corroboration to justify his conviction on the serious charge against him.

It is satisfactorily proved that ill-blood existed between the prisoner and the deceased, owing to the intrigues of the latter; that the prisoner had been away for sixteen or seventeen days, visiting his first wife, which was of course very likely to irritate the deceased, and that a quarrel took place directly he returned; that the prisoner asserted, both to his eldest daughter and to the Police Patel, that the deceased had died from the bite of a snake, but did not attempt to prove his statement, and afterwards told the Police Patel that his wife had committed suicide; furthermore, the deceased was in perfect health, and neither the prisoner nor any of his

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children venture to assert that she died from natural causes, while marks of foul play were plainly visible on the throat of the corpse.

The lowness of the roof of the house, the fact that the rope hung horizontally across the room, was only two 'haths' or so from the ground, and was unprovided with a noose, so that, if the deceased had suspended herself from it, her legs would necessarily have touched the ground, effectually preclude the supposition (even if it had been advanced by the prisoner) that the deceased committed suicide.

Had she done so, the prisoner would not have taken down the body; he would himself have reported the circumstance to the Police, and pointed out the noose round her neck; and, for the above reasons, the Court can arrive at no other conclusion than that the deceased met her death by strangulation at the hands of the prisoner.

It is to be regretted that the only witnesses who could probably throw light upon the matter are the prisoner's children, who are of course naturally anxious to screen him from punishment; but as they all profess themselves unable to account for their mother's death, this admission in itself furnishes a strong presumption of the prisoner's guilt.

The prisoner is accordingly convicted, on the evidence against him, and his own confession, of murder; in having, on the night of Friday, the 13th June 1856, (corresponding with Jésht Shood 10th, Shuké 1778, Shukrawar,) in the village of Kulkeree, Talooka Moodebehal, in the Zillah of Sholapore, wilfully, and without justifiable cause, deprived of life his wife Peerma, aged forty years, by strangling her with his hands, and thereby caused her death then and there.

After mature consideration of the crime which the prisoner has committed, together with the nature of the

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punishment provided for the same by Regulation XIV. of 1827, Section XXVI. Clause 4th, the Court proceeds to pass the following sentence :—

That you, prisoner Ladlesa wulud Mukdoomsa, be hanged by the neck until you be dead, at the usual place of execution at Sholapore. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—Conviction and sentence confirmed.

1856 August 27.

AHMEDABAD.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 54 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate, W. A. RITCHIE, on the 25th January 1856. Tried by the Session Judge, A. B. WARDEN, on the 5th, 7th, 8th, 12th, and 14th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Wilful Murder.

Prisoner.—Wagha Bheema, Kolee, aged 22.

Charge.—Wilful murder; in having, on or about Sunday, 16th December 1855, (corresponding with Margsheersh Shood 8th, Sumvut 1912,) within the limits of Dhegamra, Talooka Dholka, Zillah Ahmedabad, without justifiable or extenuating cause, deprived of life Bechur Gunesh, by cutting his throat with a sword; the prisoner thereby rendering himself amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827.

Prisoner pleads not guilty.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—The Inquest Report, which has been proved by the evidence of Prag and Huree (witnesses Nos. 1 and 2), proves that the corpse of the deceased Bechur, when examined by them, had the throat cut. No one actually witnessed the perpetration of the deed; but the evidence of Sham,

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Wilful Murder.

the widow of the deceased (witness No. 5), proves that the prisoner at the bar was suspected by her husband of having committed a robbery at their house a few months ago, and that her husband had taxed the prisoner with it, and said that unless the prisoner restored the stolen property he would lodge a complaint against prisoner; the prisoner therefore came to the house one evening, and said to her husband that if he would provide himself with nine rupees and accompany him, the stolen property would be restored to him. Her husband, taking the amount specified by the prisoner, went out with him, but never returned home again. In the morning, in consequence of her husband's continued absence, she went and reported to the Mookhee what had taken place; the Mookhee went and questioned the prisoner, who replied that he had not seen the deceased. This witness has further deposed that the prisoner was armed with a sword. The evidence of Huree, Jewraj, and Ruttun corroborates that of the widow of the deceased to the extent that the deceased Bechur was seen by them on the evening in question walking with the prisoner. Every one of them has deposed that they are certain as to the identity of the deceased and the prisoner, and there is one circumstance in particular which induces the Court to credit the truth of the assertions of the witnesses Nos. 4 and 6 (Jewraj and Ruttun). They have both deposed that the prisoner had the cloth that was round the upper part of his body pulled over his head. Had these witnesses contented themselves with merely describing the clothes of the prisoner, the Court would not have thought much of it, for witnesses, in describing a prisoner's dress, generally bear in mind the garments usually worn by him, but in this instance they have described how one of the garments was worn. As they had not been questioned regarding the dress of the prisoner by the Magisterial Authorities, and as they were taken unawares, there could

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have been no collusion between them. The witness No. 7 (Guneshgur) has also deposed that he saw the prisoner and the deceased, on the evening in question, leaving the village together and going towards the place where the corpse of the deceased was subsequently found. This witness's statement is somewhat open to suspicion, for he has deposed that the deceased told him what he was going for, and at the same time enjoined him to silence. Now it seems unlikely that the deceased would have entered into particulars with him. The evidence of the Mookhee proves the discovery of the corpse of the deceased Bechur with the throat cut, and is corroborated by the Inquest Report (No. 3), which has been proved by two witnesses (Nos. 1 and 2). The deposition of the widow of the deceased is somewhat at variance with the deposition given by her before the Magisterial Authorities, but that may be owing to the time that has elapsed since the murder was committed. Anda (witness No. 9) corroborates her assertion regarding the Rs. 4 borrowed from him. There is, however, a discrepancy in their statements as to the time of day when the money was borrowed. It is to be regretted that the Mookhee did not search the prisoner's house immediately the prosecutrix informed him that her husband, who had been induced to accompany the prisoner, had not returned home; for it is possible that proofs which would have greatly strengthened the evidence for the prosecution might have been discovered if the prisoner's house had been at once searched. This neglect on the part of the Mookhee will be brought to the notice of the Magistrate. The corpse having been partially forced into a hole in the midst of a bush, and covered over with earth, will account for its preservation from the attacks of wild animals.

The evidence of the peon (witness No. 10) proves that the sword before the Court was found in prisoner's house, and

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appeared to have been recently cleaned. As there was a stain on the blade of the sword which looked like blood, and there being a mark, apparently of blood, in the interior of the scabbard, which was not open before the Court, both were forwarded for examination to the Civil Surgeon, from whose deposition, recorded as No. 12, it appears that the stain on the blade was nothing more than rust; the mark in the interior of the scabbard was scraped off and tested, but, owing to the minuteness of it, it was impossible to say whether it was blood or not. The Civil Surgeon has, however, given it as his opinion that the sword had been recently cleaned and oiled. Lastly, there is the prisoner's confession before the Police Amuldar, to the extent that he enticed the prosecutor out into the fields at the instigation of two persons, namely Urjoon and Bagul (who wished to revenge themselves on the Mookhee of the village by murdering the relation of the Mookhee), and that he (prisoner) saw the deceased being murdered: he remonstrated, but it was of no avail. This partial confession of prisoner's was retracted before the Assistant Magistrate and before this Court. The prisoner, in his defence, called his half brother Lala Khora (witness No. 19) to prove an *alibi*, but the Court does not consider that his evidence refutes that for the prosecution. Moreover, this witness, in giving his evidence, stated that not only his half brother the prisoner, but himself, had been severely beaten and ill-treated by the Foujdar, &c., and that he had seen the Mookhee bribe the Foujdar, and had also heard the Mookhee say that he would give Rs. 600 to get the witness and prisoner severely punished. On the Court asking him whether he could prove his assertions, he replied that his was a small village, and the Mookhee had threatened to turn out of the village any one who gave evidence in his favour; therefore he could produce no witnesses from his own village; but there was a person of another village, who could prove

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the truth of what he had asserted. The Court, in order to satisfy itself as to the truth of the assertions made by the witness, and to prevent the Foujdar or the prisoner's brother from tampering with the individual in question, summoned him direct without the intervention of the Magisterial Authorities. On his arrival, the Court asked the prisoner whether he would wish the witness named by his half brother to be examined or not. On his replying in the affirmative, the witness was examined (vide his deposition No. 21), but he denied all knowledge of prisoner or his half brother. The Court, upon due consideration of all the above circumstances, is of opinion that the fact of the prisoner having persuaded the deceased to accompany him in the hope of getting back his property, and the deceased having been last seen alive in the prisoner's company, and the recently cleaned sword, coupled with the prisoner's partial confession before the Police Amuldar, satisfactorily establish the prisoner's guilt. The only motive that the prisoner had for murdering the deceased was to prevent his accusing him (prisoner) of the robbery. The Court, therefore, finds the prisoner guilty of wilful murder; in having, on or about Sunday, December 16th, 1855, (corresponding with Margsheersh Shood 8th, Sumvut 1912,) within the limits of Dhegamra, Talooka Dholka, Zillah Ahmedabad, without justifiable or extenuating cause, deprived of life Bechur Gunesh, by cutting his throat with a sword.

After taking into consideration the nature of the offence proved against you, prisoner, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVI. Clause 4th, 1827, the sentence of the Court is that you, prisoner Wagha Bheema, be transported beyond seas for the term of your natural life. This sentence is, however, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

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AHMEDABAD.

Wilful Murder.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The corpse was found and Inquest held on the 21st December. All the evidence might have been complete on the 22nd December, but the case was not sent up to the Assistant Magistrate until the 23rd January, nor decided until 2nd April. I can see no grounds for the delay either before the District Police Officer or the Assistant Magistrate. If the District Police Officers will detain cases unnecessarily in this way, suspicions will always arise that they have had recourse to some improper proceeding, whether of torture or suborning evidence. The Assistant Magistrate himself doubts the evidence in the case, and under all the circumstances I do not think the evidence sufficient for conviction, and would therefore acquit the prisoner.

W. E. Frere, Puisne Judge.

Minute by Mr. Harrison.—The evidence against this prisoner consists of his confessing to having been present at the murder, retracted in the Sessions Court, and corroborated by the wife of deceased, and three other witnesses, who depose to the deceased leaving his house, on the evening he was last seen alive, in his company, and of a fourth who saw them without the village, proceeding in the direction of the spot where the body was discovered. The prisoner denies this altogether. I do not think, under all the circumstances, that sufficient reliance can be placed upon the identification of the prisoner on the occasion alleged—a dark night; and there are discrepancies in the evidence of the wife, which confirm me in the view that the prisoner must be acquitted.

W. H. Harrison, Puisne Judge.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is acquitted, and to be discharged.

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TANNA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 6 of the Criminal Return of the Magistrate of Tanna for July 1856. Tried by the First Assistant Magistrate, H. B. BOSWELL, on the 5th July 1856. Reviewed by the Magistrate, E. C. JONES, on the 9th July 1856. Reviewed by the Acting Session Judge, H. P. ST.G. TUCKER, on the 7th August 1856. Proceedings submitted for the final orders of the Sudder Foujdaree Adawlut, by the Acting Session Judge.]

Robbery by Night, with Force; and knowingly Receiving Stolen Property.

Prisoners.—No. 1, Oosman wulud Roostumkhan, Mussulman, aged 35.
2, Ramjee bin Mandun, Kutree, aged 28.
3, Baloo wulud Bhendoo, Mussulman, aged 28.
4, Jussoo wulud Esmal, Mussulman, aged 29.

Charge.—Robbery by night, with force (Regulation XIV. of 1827, Section XXXVII. Clause 3rd); in having together, on the night of the 29th June 1856, (corresponding to Mitee Jésht Wud 12th, Shuké 1778,) in the Town of Callian, Talooka Callian, Zillah Tanna, entered the house of complainant Bunna Naiqueen, by cutting a hole in the wall, by which they put in a hand, and opened the door, and taken therefrom copper and brass pots, and ornaments, worth Rs. 28-6-0, and clothes and other trifling articles worth Rs. 6-11-3, and Rs. 4 in cash; in all of the value of Rs. 39-1-3.

Under Regulation XIV. of 1827, Section XLI., with knowingly receiving stolen property; in having, on or about the abovementioned date, in the aforesaid Callian, received portions of the above property, amounting to the value of Rs. 19-5-3, knowing, or having good cause to suppose the same to be stolen property, without having given notice thereof to the Police.

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TANNA.

Robbery by Night, with Force; and knowingly Receiving Stolen Property.

H. B. Boswell, First Assistant Magistrate.

The prisoners all plead not guilty to either charge.

Finding and Sentence by the First Assistant Magistrate.—From the above evidence, and the statements of the prisoners, it is evident that at least prisoner No. 3 (Baloo) was engaged in the robbery, and that prisoner No. 1 (Oosman) was a knowing recipient of stolen property. The attempt of the latter to make it appear the property was only brought at the moment the Police came fails, inasmuch as it is shown Baloo had come some time previously to his house; in addition to which the bulky nature of the property renders it absurd to suppose Baloo would try to escape from the Police by running with it into a neighbour's house. The Assistant Magistrate has no doubt they were engaged in sharing their plunder when the Police arrived. There is a strong suspicion that Ramjee was doing the same, but there is no proof against him except the identification of the articles found in his house; and these are of so trifling a value, and so likely to be found in any house, that the Assistant Magistrate feels some doubt as to whether the attestation of their being complainant's can be relied on. Against prisoner No. 4, there is no evidence to show he did not receive the things as stated by him, and he seems to have given them up at once, when called upon, of his own accord.

Upon the above considerations, the Assistant Magistrate discharges the prisoners No. 2 (Ramjee) and No. 4 (Jussoo), and convicts prisoner No. 1 (Oosman) of knowingly receiving stolen property, as preferred against him in the second charge, to the value of Rs. 10-11-6, under Regulation XIV. Section XLI.; and prisoner No. 3 of robbery by night, with force, as set forth in the first charge preferred against him, under Regulation XIV. of 1827, Section XXXVII. Clause 3rd, and does sentence each of them to suffer one (1) year's imprisonment, with hard labour.

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TANNA.

Robbery by Night, with Force; and knowingly Receiving Stolen Property.

A further charge might be instituted against prisoner No. 1 of breach of recognisance, but as the Assistant Magistrate has already sentenced him to a severer penalty than that in the bond he has forfeited, it does not appear necessary to proceed further in the matter.

The property in evidence is restored to the complainant, with the exception of the things found with prisoner No. 2, which are kept, pending further orders.

E. C. Jones, Magistrate.

Reviewed by the Magistrate.—These proceedings are perused by the Magistrate on the prisoner Baloo appealing against the decision passed by the First Assistant Magistrate. There does not appear to be any reason for interfering with the sentence. There can be no doubt that the prisoner is the thief.

The manner in which this prisoner's first deposition was attested is very careless, and should be brought to the notice of the Joint Police Officer.

H. P. St.G. Tucker, Acting Session Judge.

Reviewed by the Acting Session Judge.—The only evidence adduced against the prisoner Baloo in this case is his retracted confession (the utterance of which by him has not been satisfactorily established), the alleged delivery by him to the Police of a nightcap which is deposed to have belonged to the complainant, and the fact that he was found seated in the house of the prisoner No. 1, where a considerable portion of the stolen property was found, and that he ran off on the approach of the Police. The cap was not included in the first memorandum of her lost property which was given by the complainant. I cannot concur with the Assistant Magistrate, or Magistrate, in thinking this evidence sufficient for conviction, and I therefore forward this case for the final decision of the Court of Sudder Foujdaree Adawlut.

If the Assistant Magistrate did not think that the prisoner Jessoo, whom he acquitted, had knowingly received the stolen property, that individual should have been admitted as a witness against the present prisoner. The

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TANNA.

Robbery by Night, with Force; and knowingly Receiving Stolen Property.

prisoner's confession, if proved, should have been recorded for the prosecution, but not being proved, it should not have appeared on the record at all. I leave it to the superior Court to remark on these irregularities, should they deem it necessary to do so.

Letter from the Acting Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—For the reasons contained in the annexed extract from my proceedings of this day's date, I have the honour to forward the proceedings held before the Magisterial Authorities of Tanna in the case of Baloo wulud Bhendoo, Telee, which were called for by me on petition, and request you will be so good as to submit the same for the final orders of the Judges of the Sudder Foujdaree Adawlut.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—There can be no doubt but that petitioner was with the convict Oosman when the property was found in his house, and his running away showed a guilty conscience. The cap found in his house, even though it was not entered in the list, may, I think, under the circumstances, be received without any doubt as evidence against him, and I would not interfere with the conviction or sentence. The Session Judge's remarks regarding the confession should be communicated to the Magistrate, and he should be informed that when the attesting witnesses fail to prove a confession, the Karkoon who wrote it, or the Officer before whom it was given, should be examined as witnesses.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—The Acting Session Judge of the Konkun forwards this case for the final orders of the Judges of Sudder Foujdaree Adawlut, having reviewed it on the petition of appeal of Baloo, and not concurring in the conviction recorded against the prisoner by the Magistrate and his Assistant.

The confession of the prisoner is retracted, and has been attested in so careless a manner that it cannot be

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TANNA.

Robbery by Night, with Force; and knowingly Receiving Stolen Property.

W. H. Harrison, Puisne Judge.

held to be proved. I think Mr. Tucker is right, and that the evidence against the prisoner is not sufficient to uphold the conviction.

I would acquit the prisoner and order his discharge. The irregularities noticed by Mr. Tucker should have been represented to the Magistrate by him.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

Minute by Mr. Harrison.—It seems to me that Baloo is evidently guilty, and I would not interfere with the sentence.

Final Resolution of the Sudder Foujdaree Adawlut.—The Session Judge is to be informed that the Court do not find cause to interfere.

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CASES

DISPOSED OF BY THE

SUDDER FOUJDAREE ADAWLUT OF BOMBAY,

IN SEPTEMBER 1856.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

1856 September 4.

SHOLAPORE.

[Case No. 22 of the Criminal Return of the Magistrate of Sholapore for March 1856. Tried by the Deputy Magistrate, W. RAYMER, on the 20th March 1856. Confirmed by the Magistrate, W. A. GOLDFINCH. Reviewed by the Session Judge, T. A. COMPTON, on appeal, on the 18th July 1856, and proceedings submitted for the final orders of the Sudder Foujdaree Adawlut.]

Assault.

Prisoner.—Kaja Ahmed wulud Kaja Noorula, Musulman, aged 24.

Charge.—Assault (Regulation XIV. of 1827, Section XXIX. Clause 2nd); in having, at about half-past three o'clock P. M., on Wednesday, the 12th March 1856, (corresponding with the 6th Falgoon Shood, Shuké 1777,) pushed the complainant, Wamun Jewajee, twice by the back of the neck, on the road near Khundoba Tank, close to the Adawlut compound, contiguous to the town of Sholapore, in the Talooka and Zillah of Sholapore.

Prisoner pleads not guilty.

W. Raymer, Deputy Magistrate.

W. A. Goldfinch, Magistrate.

Finding and Sentence by the Deputy Magistrate, confirmed by the Magistrate.—In excluding all extraneous matter from the evidence in this case, inclusive of

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SHOLAPORE.

Assault.

the recrimination, apparently without foundation, made by prisoner relative to some of the witnesses after their depositions had been taken, which, however, can in no way affect what they had previously deposed to, the Deputy Magistrate will also leave aside the depositions of Ramchunder Anunt (witness No. 3), against whom prisoner had preferred a charge of obstruction, and of Anundrow (witness No. 2), who, he says, is inimical to him, but of which he has adduced no proof, and who respectively depose to prisoner having abused and assaulted complainant.

Referring, then, to the depositions of Sew Santhapa (witness No. 4), Gunoo Wanee (No. 5), and Bhow (No. 6), who, though they say, the first, that there were about thirty or forty persons near the scene of the affray; the next, that people were passing by at the time, and six or seven were standing; and the last also that a great number of persons were passing by, and this does not in any way alter the main features of the case, as it cannot be expected that they, as mere passers by, could speak to this point with nicety; yet, as they are altogether disinterested parties, and particularly the first two, neither in favour of complainant nor prisoner, and the latter has not uttered a syllable impugning their evidence, and the two first have pointed him out, whilst in disguise, seated among four others, as the person whom they had, as deposed to by complainant, seen push him twice by the neck at the time and place aforesaid, which is further sworn to by Bhow (witness No. 6), and his witness Hybutee (No. 12), who is described as a bad character. Witness No. 10 has, by his contradictory statements on oath (Nos. 9 and 12), rendered himself unworthy of credit. The Deputy Magistrate, under these circumstances, feels constrained to come to the conclusion that the offence has been proved against prisoner, and, convicting him accordingly of assault as charged, sentences him, Kaja Ahmed

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Assault.

T. A. Compton, Session Judge.

wulud Kaja Noorula, to pay a fine of five (5) rupees to Government, or, in default, that he be imprisoned, without labour, for seven (7) days, under Regulation XIV. A. D. 1827, Section XXIX. Clause 2nd.

Reviewed by the Sessions Court.—The prisoner in this case is charged with assault, and has been convicted of the same by the Deputy Magistrate, and fined Rs. 5; but the Session Judge observes that neither in the complainant's deposition, nor in the Deputy Magistrate's finding, is there the slightest allusion to the cause of the quarrel and the alleged assault, though the Deputy Magistrate knew perfectly well that the charge of assault was not made *until the day after* the prisoner had accused the complainant Wamun Jewajee, Ramchunder Anunt, (son of the Treasurer in the Collector's Office), and another, with having obstructed him in the execution of his duty, and brow-beaten and intimidated certain witnesses whom he (prisoner) had been ordered by the Judge to bring to the Sessions Court.

There were, therefore, good *primâ facie* grounds for suspecting that the charge of assault was a *counter accusation.* The Deputy Magistrate, however, did not think fit to try Wamun Jewajee and the others for resistance to a legal process or endeavouring to defeat the course of public justice, but charged them with simple abuse, and acquitted them, not even taking the trouble to summon the three witnesses whose depositions in support of the charge had been sent up to the Magistrate by the Judge.

The complainant in this case, of course, would find no great difficulty in getting plenty of witnesses to swear that the prisoner gave him a push, but he fails to assign any reason for the assault, while the prisoner's accusation against *him* was made on the previous day.

Under these circumstances, as the Deputy Magistrate wholly ignored the fact that the prisoner Kaja was the

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first to complain, and neglected in his proceedings to ascertain or notice how the quarrel originated, or to assign any reason for the alleged assault, the Session Judge is unable to concur with the Magistrate that the conviction should be upheld, and therefore determines to forward the proceedings for the consideration and final orders of the Judges of the Sudder Foujdaree Adawlut, with his recommendation that the conviction and sentence be annulled.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—In conformity to the provisions of Regulation VIII. of 1831, Section III. Clause 3rd, I have the honour to transmit herewith, for the final instructions of the Sudder Foujdaree Adawlut, an extract from my proceedings in Case No. 99 of the Deputy Magistrate's Calendar for 1856, together with the whole of the papers and proceedings alluded to therein.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—Petitioner refused to defend himself before the Deputy Magistrate, but said he would defend himself before the Session Judge. The Session Judge mentions a number of circumstances which would have been well worthy of consideration had the petitioner urged them before the Deputy Magistrate, and had the assertions been subject to a test of their truth; but as that was not done, I do not think we can act upon these assertions as if the truth of them was proved, and the petition must be rejected; the petitioner, if unjustly punished, having himself only to blame, because he would not conform to the laws, and defend himself before the properly constituted Authorities.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—The Judge recommends that the sentence of the Magistrate for assault be annulled, on the grounds that the cause of assault was not given in evidence and examined.

I do not see any cause to interfere, for the charge

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seems clearly proved, and the counter accusation, the Judge himself tells us, was disposed of the previous day.

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Resolution of the Sudder Foujdaree Adawlut.—The Session Judge is to be informed that the Court see no cause to interfere.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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AHMEDNUGGUR.

[Cases Nos. 42, 43, 44, and 45 of the Calendar of the Ahmednuggur Sessions Court for 1856. Committed by the Assistant Magistrate, F. S. CHAPMAN, on the 27th June 1856. Tried by the Session Judge, J. W. WOODCOCK, on the 1st July 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Perjury.

Prisoner in Case No. 42.—Venkut Huree, *alias* Nana, Brahmin, aged 22.

Case No. 43.—Dhondee wulud Kanoo, Koonbee, aged 30.

Case No. 44.—Luxumun wulud Balajee, Koonbee, aged 22.

Case No. 45.—Doodharam wulud Govinda, Koonbee, aged 25.

Charge in Case No. 42.—Perjury (under Regulation XIV. A. D. 1827, Section XVI. Clause 1st, and Act V. of 1840); in having, on the 14th of June 1856, (corresponding with Jésht Shood 11th, Shuké 1778,) in the limits of the Town of Bhingar, situated within the Ahmednuggur Talooka, of the Ahmednuggur Zillah, after having made, in the presence of F. S. Chapman, Esq., First Assistant Magistrate of Ahmednuggur, the form of solemn affirmation prescribed by Act No. V. of 1840, wilfully and falsely stated that he had overheard Baba Koolkurnee, Suntoo Ghunwut, Ramrao Patel, and Bhowanee Sindia talking together, and arranging a plan for pushing an old woman (Sawetri) into a well,

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when she went to wash there; this false statement the prisoner made with the view of injuring the above parties.

Charge in Case No. 43.—Perjury (under Regulation XIV. A. D. 1827, Section XVI. Clause 1st, and Act V. of 1840); in having, on the 29th of May 1856, (corresponding with the 10th of Wuishak Wud, Shuké 1778,) in the Village of Imampoor, situated within the Nuggur Talooka, of the Ahmednuggur Zillah, after having made, in the presence of F. S. Chapman, Esq., First Assistant Magistrate of Ahmednuggur, the form of solemn affirmation as prescribed by Act V. of 1840, wilfully and falsely stated that one Baba Koolkurnee had murdered his mother by pushing her into a well; this false statement having been made with the view of injuring the aforesaid Baba.

Charge in Case No. 44.—Perjury (under Regulation XIV. A. D. 1827, Section XVI. Clause 1st, and Act No. V. of 1840); in having, on the 14th of June 1856, (corresponding with the 11th of Jésht Shood, Shuké 1778,) in the limits of the Village of Bhingar, situated within the Nuggur Talooka, of the Ahmednuggur Zillah, after having made, in the presence of F. S. Chapman, Esq., First Assistant Magistrate of Ahmednuggur, the form of solemn affirmation as prescribed by Act V. of 1840, wilfully and falsely stated that he had seen Baba Koolkurnee push one Sawetri into a well, and thereby deprived her of life; this false statement having been made with the view of injuring the aforesaid Baba.

Charge in Case No. 45.—Perjury (under Regulation XIV. A. D. 1827, Section XVI. Clause 1st, and Act V. of 1840); in having, on the 14th of June 1856, (corresponding with the 11th of Jésht Shood, Shuké 1778,) in the limits of the Village of Bhingar, situated within the Nuggur Talooka, of the Ahmednuggur Zillah, after having made, in the presence of F. S. Chapman, Esq.,

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First Assistant Magistrate of Ahmednuggur, the form of solemn affirmation as prescribed by Act V. of 1840, wilfully and falsely stated that he had overheard Dada Brahmin, Baba Koolkurnee, Rama Itowla, Ramrao Police Patel, Suntoo Ghunwut, and Bhowanee Sindia talking and planning amongst themselves to push the old woman of Chowra (Sawetri) into a well; this false statement being made by the prisoner with the view of injuring the above parties.

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Perjury.

Finding and Sentence by the Sessions Court in Case No. 42.—The prisoner is found guilty, on his own confession, of perjury; in having, on the 14th of June 1856, (corresponding with Jésht Shood 11th, Shuké 1778,) in the limits of the Town of Bhingar, situated within the Ahmednuggur Talooka, of the Ahmednuggur Zillah, after having made, in the presence of F. S. Chapman, Esq., First Assistant Magistrate of Ahmednuggur, the form of solemn affirmation as prescribed by Act V. of 1840, wilfully and falsely stated that he had overheard Baba Koolkurnee, Suntoo Ghunwut, Rama Patel, and Bhowanee Sindia talking together, and arranging a plan for pushing an old woman (Sawetri) into a well, when she went to wash there; this false statement the prisoner made with the view of injuring the above parties; and the Court passes the following sentence, under the provisions of Section XVI. Clause 2nd, Regulation XIV. A. D. 1827:—

J. W. Woodcock, Session Judge.

That you, Venkut Huree, be imprisoned in a Criminal Jail for six (6) months, viz. the first two (2) months in solitary confinement, the first seven (7) days in each month with conjee diet, and four (4) months with hard labour; and further, at the close of the third month, that you receive twenty (20) lashes on your bare back, in presence of all the prisoners.

Finding and Sentence by the Sessions Court in Case No. 43.—The prisoner is found guilty, on his own con-

J. W. Woodcock, Session Judge.

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fession, of perjury; in having, on the 29th May 1856, (corresponding with the 10th of Wuishak Wud, Shuké 1778,) in the Village of Imampoor, situated within the Nuggur Talooka, of the Ahmednuggur Zillah, after having made, in the presence of F. S. Chapman, Esq., First Assistant Magistrate of Ahmednuggur, the form of solemn affirmation as prescribed by Act V. of 1840, wilfully and falsely stated that one Baba Koolkurnee had murdered his mother by pushing her into a well; this false statement having been made with a view of injuring the aforesaid Baba. The Court passes the following sentence, under the provisions of Section XVI. Clause 2nd, Regulation XIV. A. D. 1827:—

That you, Dhondee wulud Kanoo, be imprisoned in a Criminal Jail for six (6) months, viz. the first two (2) months in solitary confinement, the first seven (7) days in each month with conjee diet, and four months with hard labour; and further, at the close of the third month, that you receive twenty (20) lashes on your bare back, in presence of all the prisoners.

J. W. Woodcock, Session Judge.

Finding and Sentence by the Sessions Court in Case No. 44.—The prisoner is found guilty, on his own confession, of perjury; in having, on the 14th of June 1856, (corresponding with the 11th of Jésht Shood, Shuké 1778,) in the limits of the Village of Bhingar, situated within the Nuggur Talooka, of the Ahmednuggur Zillah, after having made, in the presence of F. S. Chapman, Esq., First Assistant Magistrate of Ahmednuggur, the form of solemn affirmation prescribed by Act V. of 1840, wilfully and falsely stated that he had seen Baba Koolkurnee push one Sawetri into a well, and thereby deprive her of life; this false statement having been made with the view of injuring the aforesaid Baba. The Court passes the following sentence, under the provisions of Section XVI. Clause 2nd, Regulation XIV. A. D. 1827.

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That you, Luximon wulud Balajee, Koonbee, be imprisoned in a Criminal Jail for six (6) months, viz. the first two (2) months in solitary confinement, the first seven (7) days in each month with conjee diet, and four months with hard labour; and further, at the close of the third month, that you receive twenty (20) lashes on your bare back, in presence of all the prisoners.

J.W.Woodcock, Session Judge.

Finding and Sentence by the Sessions Court in Case No. 45.—The prisoner is found guilty, on his own confession, of perjury; in having, on June 14th, 1856, (corresponding with Jésht Shood 11th, Shuké 1778,) in the limits of the Village of Bhingar, situated within the Nuggur Talooka of the Ahmednuggur Zillah, after having made, in the presence of F. S. Chapman, Esq., First Assistant Magistrate of Ahmednuggur, the form of solemn affirmation prescribed by Act V. of 1840, wilfully and falsely stated that he had overheard Dada Brahmin, Baba Koolkurnee, Rama Itowla, Ramrow Police Patel, Suntoo Ghunwut, and Bhowanee Sindia, talking and planning amongst themselves to push the old woman of Chowra (Sawetri) into a well; this false statement being made by the prisoner with the view of injuring the above parties. The Court passes the following sentence, under the provisions of Section XVI. Clause 2nd, Regulation XIV. A. D. 1827:—

That you, Doodharam wulud Govinda, be imprisoned in a Criminal Jail for six (6) months, viz. the first two (2) months in solitary confinement, the first seven (7) days in each month with conjee diet, and four (4) months with hard labour; and further, at the close of the third month, that you receive twenty (20) lashes on your bare back, in presence of all the prisoners.

* * * * * * *

The Court remarks that the First Assistant Magistrate was not at liberty to select the charge, because one of the punishments attached to the crime of perjury is flogging;

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he should have been guided solely by the evidence before him in framing the charge, and the suggestion that the prisoners should be flogged was unnecessary, and it might lead to much confusion if every Assistant Magistrate was at liberty to suggest the kind and measure of punishment to be inflicted by the Sessions Court.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut ; Minute by Mr. Harrison.—The prisoners in these cases plead guilty to perjury in support of a false accusation of murder.

I see no cause to interfere in either case with the sentence, which is well merited.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoners is rejected.

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KAIRA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 93 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate of Kaira, L. ASHBURNER, on the 27th June 1856. Tried by the Session Judge, A. B. WARDEN, on the 19th July 1856, and the case submitted for the confirmation of the Sudder Foujdaree Adawlut.]

Murder.

Prisoner.—Gumbeer Poonjia, Kolee, aged 35.

Charge.—Wilful murder; in having, on or about Saturday, 24th May 1856, (corresponding with Wuishak Wud 5th, Sumvut 1912,) in the limits of the Village of Gorasur, Talooka Moundha, Zillah Kaira, without justifiable or extenuating cause, deprived of life Mungul Suda, by inflicting a blow on his head with an axe, from the effects of which the said Mungul Suda died then and there; the prisoner thereby rendering himself amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827.

Prisoner pleads guilty.

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KAIRA.

Murder.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—As the prisoner has voluntarily admitted before this Court that the deceased Mungul died from the effects of a blow inflicted with the head of an axe by him (the prisoner at the bar), it is needless to dilate upon the evidence of the witnesses. The prisoner, in extenuation of his crime, has represented that he caught the deceased in the act of violating his (prisoner's) wife. Now, his wife stated before the Police Authorities that she had for three months been in the habit of having criminal intercourse with the deceased whenever an opportunity offered, and that on the day in question she met the deceased near a well, and he began taking improper liberties with her breasts, and that while he was thus engaged her husband caught him, and they went off together towards the village quarrelling, and she followed them; the deceased went and seated himself on the 'oata' of his house, and her husband went up to him and struck him a blow with an axe. Before the Court, however, she has told a different story, viz. that the deceased, when he met her near the well, threw her down and violated her without her consent; she called out, and her husband (the prisoner) was attracted to the spot, on which the deceased ran away, pursued by her husband, who was armed with an axe. The prisoner's story tallies with this latter statement of his wife's, with one exception, viz. that when he caught the deceased violating his (prisoner's) wife, he (prisoner) was unable to kill him there and then, for he had no weapon with him, but went to his house, and, having provided himself with an axe, went and attacked the deceased with it. The two witnesses, Jewa and Buna (Nos. 5 and 6), who were sitting with the deceased when the prisoner struck him with the axe, have deposed that the prisoner did not come from the direction of his house, but from exactly the opposite direction. As these witnesses were not aware of prisoner's intention, the

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probability is that they did not heed from whence prisoner came; but as he ran off after the assault towards his house, they concluded that he came from the opposite direction. Again, it is not satisfactorily shown by these witnesses whether the deceased had but just come home, or had not been out at all. Under these circumstances, it is but fair to assume that there is some truth in the tale told by prisoner and his wife, viz. that the prisoner found his wife and deceased together. The Court is, however, of opinion, that whatever may have taken place between the prisoner's wife and the deceased was done with the woman's consent, and that her first story is the true one. Witness No. 4, the brother of the deceased, has tried to make out that the prisoner had threatened to kill the deceased because they had a dispute about the bullocks of the deceased having eaten some cotton belonging to prisoner; but this witness has made two different statements regarding this circumstance. The Court, therefore, places no reliance on it, and is convinced that jealousy on account of liberties taken with his (prisoner's) wife by the deceased was the sole motive for the perpetration of the murder. The Court, therefore, finds the prisoner guilty of wilful murder; in having, on or about the 24th May 1856, (corresponding with Wuishak Wud 5th, Sumvut 1912,) in the limits of the Village of Gorasur, Talooka Moundha, Zillah Kaira, wilfully deprived of life Mungul Suda, by striking him a blow with an axe, from the effects of which the said Mungul then and there died.

After taking into consideration the nature of the offence proved against you, prisoner Gumbeer Pooja, and the extent of punishment allowed for the same by the provisions of Regulation XIV. of 1827, Section XXVI. Clause 4th, the sentence of the Court is, that you be hanged by the neck until you be dead, at the usual place of execution at Ahmedabad. This sentence is, however,

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subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

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The First Assistant Magistrate has omitted to send up any evidence to show by whom the axe before the Court was found. As the prisoner made a full confession, the Court was able to dispose of the case without calling for evidence on that head, but it will bring this omission to the notice of the First Assistant Magistrate, so as to prevent a recurrence of it.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward herewith, for the purpose of being submitted for confirmation of the Judges, Case No. 93 of the General Calendar for the year 1856, together with an extract from my proceedings of this day's date.

On account of the provocation received by prisoner, I beg to recommend that some other sentence be passed on him in lieu of that which I felt myself bound to pass.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The Session Judge has examined the prisoner's wife (Jeve) in this case. Section XIV. Act II. of 1855 does not declare husband and wife to be incompetent to testify; but Section XX. providing that husband and wife shall in every civil proceeding be competent to give evidence for and against each other, I conclude that they are no more now, than they were formerly, competent to give evidence for or against one another in criminal cases.

It is very certain that Gumbeer did not kill Mungul on the first outbreak of passion, even supposing he had the provocation he says he received. There was time for deliberation, as Gumbeer followed Mungul from the well and assaulted him after he had time to sit down in the verandah; some of the witnesses say, even had time to commence his meal. The killing cannot be excused as having been committed on the first outbreak of

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Murder.

W. H. Harrison, Puisne Judge.

passion, and I do not think that we should be justified in mitigating the sentence passed by the Session Judge.

Minute by Mr. Harrison.—There is no doubt in this case that the deceased met his death at the hands of the prisoner, who struck him a blow with the back of an axe on the head, causing his death very shortly after.

There is no motive assigned for the deed, save the prisoner's wife's infidelity with deceased, or, as alleged by the woman herself and the prisoner, the deceased's forcible connection with her immediately before the fatal blow was given. If it were true that the prisoner did, as it is alleged, find the deceased either taking liberties with his wife at the well, or in the act of having connection with her, it is not likely that there would be any other witnesses of the fact whom he could call to prove it. The suddenness of the fatal assault does, in my opinion, corroborate the plea that provocation of the nature alleged occurred. If the exciting cause were only habitual misconduct on the part of the woman, the prisoner would hardly have chosen such time and place to wreak his vengeance on the deceased as it appears he did. On the presumption, therefore, that the prisoner struck the deceased under the excitement of recent evidence of the latter's intimacy with his wife, I would, in confirming the conviction, pass a sentence of secondary punishment.

Resolution of the Sudder Foujdaree Adawlut.—Conviction confirmed, and the case referred to a third Judge on the sentence.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—I concur with Mr. Harrison. I think that the prisoner struck the deceased, as Mr. Harrison says, under the excitement of recent evidence of his wife's intimacy with Mungul; and I would therefore comply with the Session Judge's recommendation to mercy, and sentence prisoner to transportation for life.

Final Resolution of the Sudder Foujdaree Adawlut.—The prisoner is sentenced to transportation for life.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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SHOLAPORE.

[Petition of Wamun Jeewajee and two others to the Sudder Foujdaree Adawlut. Referred to the Session Judge of Sholapore, T. A. COMPTON, for Report, on the 14th May 1856.]

Petition against the Proceedings of a Session Judge.

[See pages 848 to 850, Vol. V., and 192, 193, Vol. VI., for previous proceedings in this case.]

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The Session Judge has the honour respectfully to state, for the information of the Judges of the Sudder Foujdaree Adawlut, that he was not aware that in proceeding against the petitioners under Section LII. Regulation IV. of 1827, he was in any way acting "contrary to law," as it does not appear that the Section in question has ever been repealed; and the Judge was not engaged in criminal business, but a preliminary inquiry into the conduct of his Sheristedar.

The Session Judge must respectfully adhere to his opinion that the conduct of the petitioners ought not to be allowed to pass uninvestigated, whether they are convicted or not, and he has therefore requested the Magistrate to take the evidence of the witnesses against them, which, the Judge begs may be remembered, has not yet been done.

Resolution of the Sudder Foujdaree Adawlut.—The Session Judge is to be informed that, as Session Judge, he has not power to make the investigation alluded to in Section LII., Regulation IV. A. D. 1827, nor has the Magistrate. The investigation must be made by the Court whose process was resisted; and as process of the Civil Court was resisted, the Session Judge was acting contrary to law in inquiring into it. The investigation should have been made by the Judge. The Judge and Session Judge knows the view the Court take of this case, as far as they have yet seen it, and he can exercise his own discretion as to his future proceedings in the matter.

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Present, { William Edward Frere, Robert Keays, } Puisne Judges.

Dharwar.

[Case No. 84 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Second Assistant Magistrate, H. N. B. Erskine, on the 30th June 1856. Tried by the Session Judge, A. W. Jones, on the 29th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Rape.

Prisoner.—Yessia bin Ramapa, Jhendeh Dhungur, aged 28.

Charge.—Rape (Regulation XIV. A. D. 1827, Section XXIX. Clause 1st); in having, on Thursday, the 12th June 1856, (corresponding with Jésht Shood 9th, Shuké 1778,) in the house of his father Ramapa, in the village of Oonkul, in the Hooblee Talooka of the Dharwar Division and Zillah, violently assaulted and raped his sister Doorgee, daughter of Ramapa, a girl of about ten years of age.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with rape, and pleads not guilty.

It appears that on Thursday the 12th June last, the complainant, a child of about ten years old, was left alone in her father's house with the prisoner, and that he called to her, and, when she came near, took her up and put her on the floor of an inner room, and had criminal connection with her. She also says that the prisoner put a cloth to her mouth, and beat her when she attempted to cry out.

The complainant gave her evidence very plainly, and the Session Judge can see no reason to doubt that she has told the truth. It is not to be expected that so small a child could have offered much, certainly not an effectual resistance to the prisoner, who is tall for a native, and a strong looking man; but the Session Judge did not question the complainant very closely as to her resistance,

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DHARWAR.

Rape.

considering the consent of so small and young a child immaterial.

It is shown that the complainant and her sister went at once to complain of this violence to the Police Patel, who ordered an examination to be made of her person by a jury of women. Two of these have been examined, and they prove that the injuries to the person of Doorgee were such as would be caused by a man having sexual intercourse with a child of complainant's years, who, they depose, had not come to the age of puberty. These injuries were also still to be traced when the child was examined some time after by the Civil Surgeon, as shown in his deposition*; and that they could have been occasioned by the fall of a reaping-hook, as is declared by the prisoner in his defence, is stated to be impossible by all these witnesses. There can, therefore, be no doubt of the prisoner's guilt, and the prisoner is therefore convicted of rape; in having, on Thursday, the 12th June 1856, (corresponding with Jésht Shood 9th, Shuké 1778,) in the house of his father Ramapa, in the village of Ookul, in the Hooblee Talooka, of the Dharwar Division and Zillah, violently assaulted and raped his sister Doorgee, daughter of Ramapa, a girl of about ten years of age.

* *Deposition of the Civil Surgeon.*—The girl Doorgee, now before the Court, was sent to me on or about the 1st instant, with a request that I should examine her person, with the view of ascertaining whether or not she had been subjected to violence, and the crime of rape perpetrated upon her. I made a careful examination, and found that violence had been offered, and, as far as I was able to judge from the appearances presented, it was my opinion that the above crime had been fully perpetrated. Some time must, however, have elapsed, as the apparent injuries had partially healed. Had I seen her at an earlier period, I should have been better able to have testified decidedly to the fact.

By the Court.—Could the injuries you describe have been inflicted by the accidental falling of this reaping-hook (now produced) upon the person of the girl?

The injuries I have mentioned could not have been so produced.

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DHARWAR.

Rape.

And after considering the nature of the crime committed by the prisoner, and particularly that it was committed against his own sister, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXIX. Clause 1st, the following sentence is passed :—

That you, Yessia, be imprisoned for fourteen (14) years, of which thirteen (13) are to be passed with hard labour, and one (1) year in solitary confinement; each year of hard labour to be followed by a month of solitary confinement after the first year, *i. e.* beginning at the second year. Subject to the confirmation of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—The conviction is confirmed, and the prisoner is sentenced to eight years' imprisonment, viz. six months' solitary confinement, and after that seven years' imprisonment with hard labour, and at the expiration of that, six months' solitary confinement.

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AHMEDABAD.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 107 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate, W. A. RITCHIE, on the 25th July 1856. Tried by the Session Judge, A. B. WARDEN, on the 30th July 1856; and proceedings submitted for the confirmation of the Sudder Foujdaree Adawlut.]

Perjury.

Prisoner.—Khora Khana, Kolee, aged 28.

Charge.—Wilful perjury; in having, on or about Tuesday, 17th June 1856, (corresponding with Jésht Shood 14th, Sumvut 1912,) in the Court of Adawlut at Ahmedabad, before A. B. Warden, Esq., Session Judge of Ahmedabad, wilfully made a false statement, on solemn affirmation, to the effect that he had made no petition to any public functionary on the subject of the

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murder of his brother Urjoon Khana, whereas he (prisoner) knew that he had made such a petition to the Police Amuldar of Veerumgaum; the prisoner's motive being to obtain the acquittal of Putho Gula, then on his trial; the prisoner thereby rendering himself amenable to the provisions of Regulation XIV. Section XVI. of 1827, and Act V. of 1840.

Prisoner pleads guilty.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—Prisoner is found guilty of wilful perjury; in having, on Tuesday, 17th June 1856, (corresponding with Jésht Shood 14th, Sumvut 1912,) in the Court of Adawlut at Ahmedabad, before A. B. Warden, Esq., Session Judge of Ahmedabad, wilfully made a false statement, on solemn affirmation, to the effect that he had made no petition to any public functionary on the subject of the murder of his brother Urjoon Khana, whereas he (prisoner) knew that he had made such a petition to the Police Amuldar of Veerumgaum; the prisoner's motive being to obtain the acquittal of Putho Gula and Vurshung Gula, then on their trial.

The Court considers it necessary here to remark, that the prisoners Putho Gula and Vurshung Gula, who were on their trial for the murder of Urjoon Khaná, in having assaulted him with their fists and with kicks, and thereby caused his death, were acquitted owing to the evidence against them being of a most unsatisfactory and contradictory nature; no accusation was preferred against them until six months after Urjoon Khana's death, when the petition alluded to in the charge, and which the prisoner at the bar denied all knowledge of before the Court, was presented by prisoner to the Police Amuldar of Veerumgaum, and Putho Gula and Vurshung Gula were apprehended and put on their trial for the murder. There is no doubt that the prisoner brought forward the accusation against Putho Gula and

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Vurshung Gula at the instigation of one Gunesh, whose object was, if he could substantiate the charge of murder, to get the Mookhee into trouble for not having reported the murder, and thus get him ousted out of his office, and secure for himself (Gunesh) the Mookheeship. The prisoner now at the bar, while giving evidence, was repeatedly warned by the Court to speak the truth, and warned of the penalty he would incur if he perjured himself; but, in spite of this warning, he positively denied all knowledge of the petition, he having evidently repented of having been induced to present the petition.

After taking into consideration the nature of the offence proved against you, prisoner Khora Khana, and the extent of punishment allowed for the same by the provisions of Regulation XIV. of 1827, Section XVI. Clause 2nd, and Act V. of 1840, the sentence of the Court is, that you be imprisoned for one (1) year, without labour. Owing to your being a cripple, hard labour is omitted. This sentence is subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—Conviction confirmed, and prisoner sentenced to pay a fine of one hundred (100) rupees, or six (6) months' imprisonment, without labour.

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Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 39 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate, W. A. RITCHIE, on the 13th February 1856. Tried by the Session Judge, A. B. WARDEN, on the 21st, 23rd, 24th, 25th, and 26th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Wilful Murder.

Prisoners.—No. 1, Huree Kurshun Geerdhur oorf Ramnya, Bunya, aged 15.

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Wilful Murder.

Prisoners.—No. 2, Gowurdhun Geerdhur oorf Vurdaman, Bunya, aged 25.

Charge.—Wilful murder; in having, on or about Saturday, 12th January 1856, (corresponding with Poush Shood 5th, Sumvut 1912,) in the limits of the town of Dholka, Talooka Dholka, Zillah Ahmedabad, wilfully, and without justifiable or extenuating cause, deprived of life Narayen and Damodhur, the sons, respectively, of Bhugwan Purshotum and Mooljee Sumboo, Gachees, and aged eight and seven years, by administering to them some poison, or deleterious substance, in a quantity of dried dates and sugar, while returning home from school about noon, from the effects of which Damodhur died that day, and Narayen six days afterwards; the prisoners thereby rendering themselves amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827.

Prisoners plead not guilty.

A. B. Warden,
Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners are charged with wilful murder; in having administered some poison, or deleterious substance, in a quantity of dried dates and sugar, to two little boys, aged eight and seven years respectively, from the effects of which one boy died the same day, and the other a few days afterwards. From the evidence of Ishwur and Bakhore (witnesses Nos. 2 and 3), it appears that the Inquest Report No. 4 was drawn up by them and others, after examining the corpse of the boy Damodhur; and from the evidence of Pana and Hurgowun (witnesses Nos. 5 and 6), it appears that the Inquest Report No. 7 was drawn up by them and others after examining the corpse of the boy Narayen. These two Inquest Reports respectively ascribe the death of the boys to poison. The evidence of Nurseram and Motee (witnesses Nos. 8 and 9) prove that the deposition recorded as No. 10 was given on simple affirmation by

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the boy Narayen, before the Joint Police Amuldar of Dholka, the very day that the boy was seized with vomiting, &c., but while he was perfectly conscious. The first of these two witnesses (Nurseram, No. 8) is a schoolmaster, and from his evidence it appears that the deceased boys used to attend his school, and on the day that they were taken ill they both left school about 11 o'clock in the day in perfect health, and that they had one or one and a quarter koss to go to their houses. From the deposition of the boy Narayen (No. 10) it is ascertained that he left school with three other boys, Damodhur (since dead), Chota, and Hurgowun; on their way home they met Ramnya (prisoner No. 1), who gave him one date and a mouthful of sugar to eat, and two dates and two mouthfuls of sugar to one of his companions (Damodhur). The boy Narayen, not knowing the prisoner's name, described him as the son of a Bunya, but his father having learnt the name of prisoner No. 1 from the boy Damodhur, information of what had occurred was given to the Joint Police Amuldar, who, having apprehended the prisoner No. 1 (Ramnya), took him, and several other lads, and placed them before the boy Narayen, who at once pointed out the prisoner No. 1 as the lad who had given him and his companion the dates and sugar to eat. The boy Narayen never mentioned anything about the prisoner No. 2 (Gowurdhun) having been present when the prisoner No. 1 gave the dates and sugar. The boy, who died a few hours after he was seized with vomiting, &c., and before his deposition could be taken, stated in the presence of several witnesses that Ramnya (prisoner No. 1) had given the dates and sugar to him and Narayen, and that Gowurdhun (prisoner No. 2) was with prisoner No. 1 at the time. The question then is whether the assertion of the boy Damodhur can be received as evidence through third parties. It is laid down in Russell on Crimes and Misdemeanors that the

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dying declaration of a person is admissible as evidence, and the same amount of credit to be given to it as if it had been made on oath, provided the dying man was conscious of his approaching end, and entertained no hopes of recovery. Now the boy Damodhur was too young to be aware of his danger, but as he could have had no motive in falsely accusing the prisoner, his deposition ought to be admitted as evidence against the prisoners. The evidence of the two boys Chota and Hurgowun (witnesses Nos. 15 and 16), which has been taken on simple affirmation, under the provisions of Act II. of 1855, owing to their not understanding the nature of an oath, proves that the prisoner No. 1 (Ramnya) gave one date and one mouthful of sugar to the boy Narayen, who died five or six days afterwards, and two dates and two mouthfuls of sugar to the boy Damodhur, who died a few hours afterwards; and that the prisoner No. 2 (Gowurdhun) was standing by at the time, with an earthen vessel in his hand, which he held out to prisoner No. 1, who helped himself to sugar out of it. As six months have elapsed since the circumstances detailed by them occurred, and as their statements tally, with the exception of one or two trifling discrepancies, the Court has not the least hesitation in giving full credit to their statements. The boy Chota is remarkably shrewd and intelligent. The witnesses Munhore and Peerbhaee, whose depositions are recorded as Nos. 17 and 18, are not to be relied on, for none of the boys at their first examination mentioned either of them as having been present when the dates and sugar were given ; and the Court strongly suspects that they have been suborned to give evidence, so as to bring about the conviction of the prisoners, against whom ill-feeling on the part of some of the witnesses is evident. The deposition of the father and uncle (Nos. 12 and 11) of the boy Narayen, and the depositions of the father and grandmother (Nos. 13 and 14) of

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the boy Damodhur, prove that both the boys, on returning home from school, were seized with the same symptoms, and that one of them died a few hours afterwards, and the other a few days afterwards. The corpse of the boy Damodhur, and the excrement and vomit of the boy Narayen, were brought to Ahmedabad, and were examined by the late Civil Surgeon, whose evidence on the subject is most unfortunately unobtainable, owing to his having left the Station; the evidence, however, of Dr. Wyllie (No. 24) proves that the substances before the Court are white arsenic and orpiment, and the symptoms caused by a person taking them are similar to the symptoms which several witnesses have described the boys to have suffered from. The evidence of the Hospital Assistant (witness No. 27), and the evidence of the boy Damodhur's father (witness No. 25), prove that the corpse of one of the boys (Damodhur), and the vomit and excrement of the other boy (Narayen), were brought to the Hospital and examined by Dr. Bowie. Dr. Bowie's letters (Nos. 25 and 26*), although

* *Letter from the Session Judge to the Civil Surgeon.*—I have the honour herewith to forward per bearer a phial containing some pale straw-coloured powder, and two little lumps of some white substance, and one lump of some yellow substance, and to request that you will examine the same, and, if convenient, attend at this Court to-morrow at 3 P. M., to give your evidence on the subject.

Deposition of the Civil Surgeon.—I, David Wyllie, aged 35 years, Christian religion, Civil Surgeon of Ahmedabad, depose on oath that I this day examined the three different substances now before the Court. The first of these is solid white arsenic, the second is orpiment and arsenious sulphide, and the third is sulphur. A person to whom arsenic is administered is seized with violent vomiting, pain in the stomach, and burning sensation in the throat. It decidedly produces thirst. A very few grains would prove fatal; a very small quantity, in fact the smallest quantity, administered with a mouthful of sugar, would leave a sense of acridity in the mouth; a small quantity would be several hours in producing death, more likely several days. Two letters, one dated 23rd January and the other 2nd February 1856, now shown

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not admissible as direct evidence, yet are of use, as they help to corroborate the evidence recorded in the case. The evidence of the Native practitioner tends to prove that one of the boys (Damodhur) had all the symptoms of having taken poison. The evidence of Ruttun and Shumsheer (witnesses Nos. 20 and 21) prove the discovery of a little piece of white arsenic in the house of the prisoners, and some white arsenic and orpiment in the shop of prisoner No. 2 (Ramnya). Prisoner No. 1 (Gowurdhun) tried to prove an *alibi* and failed, and also tried to make out that the arsenic was put into the shop of his brother (prisoner No. 2) by Daiyal, or some one else; but this he has not been able to establish. The Court, having duly weighed all the evidence in this case, is fully satisfied that there was arsenic mixed up either with the dates or the sugar which were given by the prisoner No. 1 to the boys Damodhur and Narayen, with the connivance and assistance of prisoner No. 2 (Gowurdhun).

me, have the signature of Dr. Bowie, late Civil Surgeon of Ahmedabad, affixed to them. The Hospital Assistants were present at the *post-mortem* examination of a boy's corpse, and the removal of the viscera by Dr. Bowie, which he took to his house.

Letter from the Acting Civil Surgeon to the Third Assistant Magistrate in Charge.—In reply to your letter just received, I have the honour to inform you that I am at present engaged in investigating the case in question, and from the test already used, together with the appearance of the stomach and intestines of the dead body, I have no doubt but that poison was used, and, when called upon, I shall be able to state what that poison was.

Letter from the Acting Civil Surgeon to the Assistant Session Judge.—With respect to the body of a male child sent to the Civil Hospital on the 11th or 13th ultimo, I have the honour to inform you that I have concluded the analysis of the viscera and contents of the stomach, also of the contents of two chatee pots said to contain the vomit and excrement of another boy, poisoned at the same time as the deceased, but still living at the time the chatee pots were forwarded to me, and am ready with evidence, when called for, that arsenic was administered during life.

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The motive assigned by the parents of the boys for the administration of the poison by the prisoners is their (the parents') refusal to supply prisoner No. 2 (Gowurdhun) with oil gratis. One can hardly believe that any human being would be so brutal as to deprive of life two little boys for such a trifle; yet, as the evidence in the case satisfactorily proves that the prisoners did commit the crime with which they are charged, the Court has no alternative but to convict both the prisoners of wilful murder, as set forth in the charge. After taking into consideration the nature of the offence proved against the prisoners, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVI. Clause 4th, of 1827, the sentence of the Court is that you, prisoner Huree Kurshun, and you, prisoner Gowurdhun, be transported beyond seas, for the term of your natural lives. This sentence is, however, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward herewith, for the purpose of being submitted for confirmation of the Judges, Case No. 39 of the General Calendar for the year 1856, together with extracts from my proceedings of the 21st, 23rd, 24th, and 25th instant, and this day's date.

I beg to suggest that, in consequence of the extreme youth of the prisoner No. 1 (Huree Kurshun), and as it is very probable that he was a mere tool in the hands of his elder brother, prisoner No. 2, that some other punishment than transportation for life be awarded.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case it appears that the deceased boys, Narayen and Damodhur, aged seven and eight years, left their school in good health about midday on the 12th January, and, on their way home, were given to

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eat some dates and sugar by the prisoners; that on reaching their houses, both were seized with vomiting and other urgent symptoms, and Damodhur died the same evening, Narayen six days after. On being questioned as to the cause of seizure, Narayen named prisoner No. 1 as having given him dates and sugar; and his deposition, taken the same day in the prisoner's presence, is produced, to this effect. Damodhur is stated to have alleged that both the prisoners were together giving the sweets to them, and this is corroborated by two children who were with them, and on whose testimony the Session Judge relies, while he rejects that of two adult witnesses produced to the same effect. It must be observed, however, that the children's depositions (Nos. 15 and 16) differ from those they gave before the Joint Police Officer as regards the presence of Gowurdhun (prisoner No. 2) at the time the sugar and dates were given.

Some arsenic (how much is not set forth) was found in the house of the prisoners, or rather of their father; and the Civil Surgeon deposes that the symptoms described as suffered by the deceased are such as would follow administration of that poison. The only motive suggested for poisoning the children seems, as the Session Judge observes, too paltry to account for such a crime, slight as we too often find the unresisted temptation for the commission of murder.

It is greatly to be regretted that the testimony of Dr. Bowie, who appears to have examined the body of Damodhur and the vomit of Narayen, was not forthcoming. In its absence, I cannot think that the cause of death is established to be poison; so that, were it held proved that the prisoners had arsenic in their possession, and gave dates and sugar to the children shortly before they were seized with fatal illness, violent as is the suspicion that these circumstances would create, the proof to convict of murder would be wanting.

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There is, however, evident prejudice against the prisoners, who seem to be bad characters. They deny knowledge of the arsenic found in their father's house, or shop, and, as the fact of their administering anything to the deceased rests on the testimony of very young children, I think that they must be acquitted and discharged.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—I am of opinion that it is clearly proved that, on the date mentioned in the charge, the two prisoners gave the children some dates and sugar to eat, shortly after partaking of which one of the boys died, and the other five days after. Some of the vomit of the boy Narayen, and the viscera of Damodhur, were taken into Ahmedabad, and, as far as can be ascertained from the reports of the Civil Surgeon, both were found to contain arsenic; and lastly, it is proved that arsenic was found in the house in which the prisoners resided, for which they can in no way account.

The fact regarding the arsenic in the intestines and vomit of these boys has not been legally proved. If it were so proved, I think the evidence would be sufficient to uphold the conviction and sentence; and under these circumstances, I would suggest that the case be returned to the Session Judge, with instructions to send for and take the evidence of Dr. Bowie, wherever he may be.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge.

W. E. Frere, Puisne Judge.

Minute by Mr. Frere.—Supposing it proved beyond the possibility of doubt that Narayen and Damodhur died from the effects of arsenic, there are two other points to be proved (of which I find no proof in the case) before the prisoners can be convicted of murder,—first, that the arsenic, from the effects of which they died, was contained in the dates and sugar given to them by the prisoners; and secondly, that the prisoners knew that

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there was arsenic in these things when they gave them to the deceased.

The Police appear to have taken much pains in searching the house and shop, but entirely to have overlooked the fact that it was the earthen vessel which prisoner Gowurdhun had that would contain the requisite proof of the sugar and dates having been poisoned; but for that they do not appear to have made any search: and then, after that had been found, proof would have been required that the prisoners put the arsenic into it, or must have known of its being there, before they could be found guilty of the murder by administering poison; and as I cannot find any trace of such evidence being procurable, no good would be obtained by taking Dr. Bowie's evidence, and I agree with Mr. Harrison that the prisoners should be acquitted and discharged.

As Mr. Warden will allow witnesses to depose to what they have heard, and will record that hearsay as evidence, I am not surprised at his being misled in a case like this, and fancying that there is evidence against the prisoners. If he would only strike out from every deposition all the hearsay, and read the case over again, he would be surprised at the want of real evidence which he will find in it.

Final Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoners to be discharged.

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BELGAUM.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 75 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Deputy Magistrate, RAO BAHADOOR RAGHOBA JUNARDHUN, on the 9th June 1856. Tried by the Session Judge, A. W. JONES, on the 8th, 15th, 19th, and 26th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Murder.

Prisoner.—Owmee kom Goondana, Murathnee, aged 25.

Charge.—Murder (Regulation XIV. Section XXVI. Clause 1st, of A. D. 1827); in having, on the night of Thursday, the 29th May 1856, (corresponding with Wuisbak Wud 10th, Shuké 1778,) in the house of one Soobaka kom Bajee Desaee, in the Town of Belgaum, in the Padshapoor Talooka, in the Belgaum Division of the Dharwar Zillah, wilfully, and without justifiable or extenuating cause, deprived of life her infant (a child of about eighteen days old), by putting over its mouth a heavy coverlet, and by not supplying it with food from 10 P. M. till 5 A. M., which suffocation and want of proper nourishment caused death.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoner is charged with murder, and pleads not guilty.

The charge against the prisoner is that she killed her own child, by putting over it a thick quilt.

It appears the prisoner, by her own account, has been deserted by her husband on account of having the venereal disease, and that she subsequently became a prostitute, and that she has lately had a child, which, however, from her poverty, and the state of health consequent thereon, she was unable to nurse or bring up. She made several attempts to get other persons to take charge of it, but the child was blind of one eye, and was

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therefore returned on her hands; and her confession, which was proved before the Court, states, that finding she could not provide for it when she brought it home from the last person who returned it, she got angry, and, in the night, put over its mouth a quilt, and left it, and that in the morning she found it dead.

An Inquest was held on the child's body, the report of which was proved before the Court; but the members could find no cause of death, and the report therefore only shows that no marks of violence were visible on the body.

The body was, however, very properly sent by the Deputy Magistrate to the Acting Civil Surgeon at Belgaum for examination, and that gentleman has deposed that the lungs, heart, and liver of the child were highly congested, from an imperfect supply of air; and although he could not be positive that the state of these organs could be produced by no other cause than suffocation, still he thought it probably had been caused thereby.

His evidence is, in the opinion of the Session Judge, sufficient to corroborate the prisoner's confession, since it shows that the organs were in a state which suffocation would produce.

The prisoner's defence is simply a denial of all that criminates her; that is, she denies having purposely suffocated the child, or having admitted to the Jemedar that she had killed the child, or that she confessed to having done so before the Police; and she now ascribes to accident what she previously confessed to having done wilfully: but the Session Judge considers the circumstances of the case are such as to make all these admissions natural and probable; and though a state of destitution, such as it is clear the prisoner was in, might be considered as an extenuation of some offences, it is hardly necessary to point out to her that it is none in the case of a mother destroying her own child, and the Session Judge therefore convicts the prisoner of murder;

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Murder.

in having, on the night of Thursday, the 29th May 1856, (corresponding with Wuishak Wud 10th, Shuké 1778,) in the house of one Soobaka kom Bajee Desaee, in the Town of Belgaum, in the Padshapoor Talooka, in the Belgaum Division of the Dharwar Zillah, wilfully, and without justifiable or extenuating cause, deprived of life her infant (a child of about eighteen days old), by putting over its mouth a heavy coverlet, which suffocation caused death.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. Section XXVI. Clause 4th, of 1827, the following sentence is passed :—

That you, Owmee, be transported across the seas for the term of your natural life. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—That the infant was suffocated is beyond doubt. The only question is, was it accidental, or did the mother murder it? The Session Judge considers that the circumstances of the case are such as to make Owmee's admission before the Jemedar, and confession before the Police, that she wilfully suffocated her child, natural and probable.

The prisoner appears to have been reduced to a most wretched state by disease and poverty, which might drive her to destroy her offspring; but the very same causes would lead her to admit anything she was asked by those in authority; and as her own (now retracted) assertion is the only proof we have of the death not being accidental, and we know that infants are often smothered in their sleep by the purest accident, I do not think the proof in this case sufficient, and would therefore acquit the prisoner.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—The only evidence against this wretched woman is her own confession to the Police,

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corroborated by the testimony of the Civil Surgeon to the fact that the corpse of the child presented appearances such as may be caused by suffocation. I do not think that this is sufficient corroboration, for Dr. Neilson states that he could not say that the state of the body indicated without doubt suffocation as the cause of death, or that it might not indicate other cause; and I would acquit the prisoner.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoner is to be discharged.

1856 September 4. RUTNAGHERRY.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 44 of the Calendar of the Rutnagherry Sessions Court for 1855. Committed by the First Assistant Magistrate, G. SCOTT, on the 12th July 1855. Tried by the Senior Assistant Session Judge, H. P. ST. G. TUCKER, on the 26th July 1855. Reviewed on appeal by the Session Judge of the Konkun, C. M. HARRISON, on the 15th August 1855. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Perjury.

Prisoner.—Saba bin Vit Dhooree, Muratha, aged 28.

Charge.—Perjury, on the two following counts: 1*st*, in that he did, on 5th June 1855, (Hindoo date Jésht Wud 5th, Shuké 1777,) at the Kutcheree of the Police Amuldar of Malwan, declare on solemn affirmation before Shaik Ahmed Desaee, in the course of a criminal investigation which was being made into the conduct of Ramchundra and Babjee Jugset Lars, who were charged with the undue levy of 'phuskee huks' by one Lingapa bin Nagapa, that "he had never seen any phuskee huks levied in the bazar, and that he never remembered to have seen any coriander seed measured in the Phudkey's store, or to have witnessed any dispute about a theft or undue levy of phuskee huks in the presence of either of

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RUTNAGHERRY.

Perjury.

the Lars"; the said declaration being false, and wilfully made with the intent to screen the aforesaid Lars, whose conduct was then under investigation.

2nd.—In that he did, on the same day and place, and before the same Officer mentioned in the first count, but at a later hour, declare on solemn affirmation "that six weeks or two months previously he had witnessed the measurement of some coriander seed belonging to a Wanee from above the Ghauts at the Phudkey's store, and that Ramchundra Jugset Lars had set apart three 'pylees' of the seed, placed it in a bag, and given it to one Dhondo Kamle; that one Bhasker came up and seized the bag, when the Foujdar (Ramchundra's brother, Babajee) asked Bhasker what he was about, to which Bhasker answered that he should know hereafter; that he (prisoner) had concealed these facts in his first deposition at the instigation of Bapoo Esajee, Havildar of Police"; the said declaration being false, and wilfully made with intent to injure the said Bapoo Esajee, Police Havildar. (Regulation XIV. Section XVI. Clause 1st, of 1827.)

Prisoner pleads not guilty.

H. P. St. G. Tucker, Senior Assistant Session Judge.

Finding and Sentence by the Senior Assistant Session Judge.—The prisoner admits that he has made two contradictory statements when examined as a witness by the District Police Officer on 5th June. He allows that solemn affirmation was administered to him at the first examination, but does not remember whether it was at the second. He admits, also, that the first declaration made by him was false, and that he was instigated to make it by a Havildar of Police. The precise object of the false statement he does not explain, nor is this apparent from the evidence on which the committal has been founded; but, if the second deposition be true, as the prisoner says it is, the first must have been made to screen the parties then under trial. The prisoner, on

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Perjury.

his own admission, has committed perjury, and I have thought it unnecessary to go into the evidence sent up to show that it was the second deposition that was false, and not the first one, as now stated by the prisoner. One of the contradictory depositions must be false, and the prisoner admits that one was false, and that this false statement was made on solemn affirmation. This is quite sufficient for his conviction. I accordingly find him guilty of perjury, as set forth in the first count of the indictment.

Read and recorded a warrant dated 28th December 1851, from which it would appear, that in that year the prisoner was tried and convicted of the criminal receipt of stolen property, and was sentenced to six months' imprisonment, with hard labour, and then to pay a fine of Rs. 20, or to suffer an additional imprisonment for two months, with hard labour.

The prisoner admits that he was the person referred to in this warrant, and that he underwent the sentence thereby imposed.

The prisoner, Saba bin Vit Dhooree, is sentenced to be imprisoned and kept to hard labour, for the period of two (2) years from this date. (Regulation XIV. Section XVI. Clause 2nd, of 1827.)

C. M. Harrison, Session Judge.

Review by the Sessions Court on Appeal.—The Court sees no cause for interference in this case.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The petitioner must be acquitted; there is no evidence against him. He has pleaded not guilty, though, when improperly questioned by the Assistant Session Judge, he admitted that one of two statements was false. The Assistant Session Judge ought to have known that he could only by law receive that admission together with all that was urged in extenuation, and, therefore, that it was not sufficient for conviction; and that he ought to have gone into the evidence sent up with the case.

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RUTNAGHERRY.

Perjury.

This case differs from Sumbhoo's and the other cases reported in Morris's Reports for June last, page 759, inasmuch as evidence was taken in those cases but not in this. Those cases having come before me only on reference, I abstained from commenting upon any part of the trial not referred. I would now, however, record my concurrence in what I believe is Mr. Harrison's opinion, that prisoners should not be put upon their trial for perjury, on what I see they call, but improperly, two counts, for it is on two charges,—one in having deposed in the affirmative, and the other in having deposed in the negative. The Session Judge should satisfy himself as to which statement was false, and should try the prisoner for perjury, in having made that statement. The Assistant Session Judge in this case appears to have satisfied himself that it was the second deposition that was false, and to have had evidence to establish it; but because the prisoner made an admission that the first statement was false, Mr. Tucker preferred taking that admission to the trouble of trying the case, and the consequence is that the prisoner must be acquitted.

I am not, however, quite satisfied that the prisoner would not, under any circumstances, have been entitled to an acquittal; for if it is a good defence in perjury when the prisoner can prove that an explanation was given, qualifying or limiting his first answer, I feel very much inclined to doubt whether a charge will hold against a prisoner which charges him in the first place with making an assertion, and afterwards with making another assertion, qualifying or limiting it, which I certainly find in this case; but that is a point which I need not press further at present.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—I do not think that this conviction will stand. The prisoner corrected what he had stated falsely the same day, but his original statement, and his retraction, are both separately charged as perjuries.

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The only proof against the prisoner is his own admission, which must be taken as a whole, and he must be acquitted.

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RUTNAGHERRY.

Perjury.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoner to be discharged.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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TANNA.

[Case No. 20 of the Criminal Return of the Magistrate of Tanna for March 1856. Tried by the Deputy Magistrate, R. H. SHOWELL, on the 6th and 7th March 1856. Confirmed by the Magistrate, E. C. JONES, on the 8th March 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Prisoner.—Bapoo bin Madho Powar, Muratha, aged 33.

Robbery by Night, with Force.

Charge.—Robbery by night, with force (Regulation XIV. Section XXXVII. Clause 3rd, of 1827); in having, on the night of the 3rd March 1856, at about 2 o'clock, (corresponding with Magh Wud 11th, Shuké 1777,) at Tanna, Talooka Salsette, Zillah Tanna, broken a hole in the wall of the house of Dhurma bin Dhama Bhoir, near the door, and thereby unclosed the door, entered the house, and stolen therefrom three copper pots, valued at Rs. 9-12-0, the property of Dhurma.

Prisoner pleads not guilty.

R. H. Showell, Deputy Magistrate.
E. C. Jones, Magistrate.

Finding and Sentence by the Deputy Magistrate, confirmed by the Magistrate.—According to the evidence of the two witnesses for the prosecution, Pudmee and Muthe (Nos. 3 and 4), they slept on the night in question in the dining room of the complainant's house, in which room there was a light burning, as usual, for all night. Pudmee was aroused by her foot being touched, and, on awaking, recognised the prisoner Bapoo, and called out

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his name, which awoke Muthe, who also recognised Bapoo the prisoner, who it seems was well known to them both. They also perfectly agree as to the dress he wore. This evidence suffices to settle the identity of the man as being the prisoner Bapoo.

Prisoner, when seen by these two witnesses, was in the act of carrying off two out of the three missing pots through the door, which, it was found on examination, had been opened by a hole being broken through the wall near the fastening.

No one else was seen with prisoner at the time.

The two girls were afraid to give an alarm, lest they might be maltreated, but they awoke complainant, who was asleep in an adjoining room, and immediately mentioned the prisoner Bapoo as the person who had robbed the house; and complainant on this mentioned his name to the Police Sepoy Syed Davood (witness No. 5), who went to prisoner's house and called him up, when he answered as if he awoke, and the Sepoy describes the appearance of prisoner as tending to show he had not just then awoke out of sleep, and seemed chop-fallen. Prisoner has failed to prove that he was in his house all night. The evidence of persons asleep in the house is hardly of weight one way or the other, on such a point.

On these grounds, the Deputy Magistrate considers the prisoner Bapoo guilty of the charge alleged against him, and which, as a serious act of house-breaking, seems to call for severe punishment. The prisoner is therefore sentenced to one (1) year's imprisonment, with hard labour. (Regulation XIV. of 1827, Section XXXVII. Clause 3rd.) Subject to the confirmation of the Magistrate, under Regulation IV. of 1830, Section III.

The Foujdar's report under to-day's date, recorded in the case, shows that it will be necessary, on prisoner's release, to take effectual measures to restrain prisoner

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Robbery by Night, with Force.

W. E. Frere,
R. Keays,
Puisne Judges.

from crime; he should therefore be returned to this Department on being released.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere, concurred in by Mr. Keays.—The Police appear to have nothing to do, and to do nothing. It appears in this case that a man gives the alarm about half-past two in the morning that his house had been broken into, and his daughters say that they recognised the prisoner as the robber who was in the house; upon that the Police Peon calls him and takes him to the Chowree, he not having the appearance of a man who had been asleep, but being chop-fallen, which he well might be. The Peon does not see whether his foot is sore, which he said it was; nor whether there were marks on his arm, which there most probably would have been, had he broken into the house as suggested; nor whether there were any traces about the door by which he might discover the robber; but he secures the house, to have it searched in the morning (what securing the house is, I do not understand), and next morning the house and neighbourhood are searched, but nothing found: nevertheless, because the prisoner was recognised as the robber, and the girls agree in his dress, which was nothing on his head and a 'dhotur,' he is found guilty of house-breaking, and sentenced to a year's imprisonment; and, because of the Foujdar's report, he is on his release to be returned for security to the Magistrate. This report is that he was fined once for abuse, and once for breach of trust, which sentence was annulled; that he was taken up on five other charges, in one of which a 'razeenama' was filed, and in the others there was no proof against him. If there was less evidence against him in these than in this case, he appears to me to be an injured person. I certainly should be neglecting my duty if I were on this occasion to defer to the Deputy Magistrate on his appreciation of the evidence, which is manifestly insufficient for

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conviction, and I would therefore annul the conviction and sentence, and would point out to the Deputy Magistrate that he should require from the Police proof that a robbery had been committed, and some further evidence against a man than the testimony of two women who had just been awoke from their sleep, and concur in recognising the robber, who was a neighbour (perhaps of doubtful character), and concur in describing his dress —a bare head and dhotur.

Resolution of the Sudder Foujdaree Adawlut.—Conviction and sentence are annulled, and the prisoner to be discharged.

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DHARWAR.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 61 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Second Assistant Magistrate, H. N. B. ERSKINE, on the 28th April 1856. Tried by the Session Judge, A. W. JONES, on the 10th, 11th, 12th, 13th, 16th, 17th, 18th, and 20th June 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Murder, attended with Robbery.

Prisoners.—No. 1, Govinda bin Bheemapa, Lingayet, aged 24.

2, Goolya bin Moogapa, Lingayet, aged 25.

Charge.—Murder, attended with robbery (Regulation XIV. Section XXVI. Clause 1st, A. D. 1827); in having wilfully, and without extenuating cause, deprived of life, in the Boogudeekal Nulla (or Jheel), in the limits of the village of Ateekol, in the Dharwar Talooka, of the Dharwar Division and Zillah, a boy named Oodpee, son of Dhasunbhut, and having, at the same time and place, forcibly taken from the said Oodpee silver ornaments to the value of Rs. 47.

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DHARWAR.

Murder, attended with Robbery.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoners are charged with murder, attended with robbery, and plead not guilty.

It appears that on Wednesday, the 9th April, a child named Oodpeerow was missed from the house of his parents in Dharwar, from a little after half-past nine in the morning, when he was last seen by his grandmother (witness No. 20). The family inquired for him, and he was searched for in various directions in and out of the town, but without success, from about 1 P. M. till the evening, when at last the complainant, the child's uncle, declared his suspicion of the prisoner Govinda, to whom the child was known to be accustomed to go constantly, and whose house is opposite to his; and this prisoner was accordingly arrested at about 5 P. M., and on searching his house a 'dhotee' was found, upon which there appeared to be marks of blood.

In the forenoon of the next day, a man, who was grazing his cattle among the hills and ravines south of Dharwar, came in, and reported that he had seen vultures pulling about the body or bones of a child; and in consequence of this information, the Kotwal, the complainants, the prisoner, &c. all went out to the spot indicated, which was at the bottom of a ravine, called the Boogudeekal Nulla.

An Inquest was held there on these bones, which was proved before the Court, and states that the boy had apparently been murdered for his ornaments, which were not to be found; and considering the loneliness of the place where the body was lying, which no child could have strayed to accidentally from Dharwar, and the traces of a man's foot in the sand, proving the child was not there alone,—the marks of silver on the stones, showing that the ornaments had been forcibly removed, and the absence of the ornaments,—the Session Judge considers that there can be no doubt that the child was murdered.

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It was of course impossible to show how the murder had been committed, but it is probable that it was by strangling, as the pressure on the throat might have caused vomiting, the traces of which were found, and certainly would have caused a gush of blood from the mouth and nose, which would account for the quantity of blood near the place where the trace of the man's foot was perceptible.

The bones were proved to be those of the child Oodpeerow, by the discovery, near the place of murder, of a child's 'angrika,' which witnesses Nos. 19 and 20, and the complainant, prove to have belonged to him; and a small silk tassel, proved by the complainant and his brother to have belonged to the waistband usually worn by the child.

The evidence against the prisoner Govinda consists of the spots on his dhotee, supposed to be blood, which were proved to be so by the evidence of the Civil Surgeon.* The prisoner endeavours to account for these spots by saying that they were occasioned by his attendance on a friend when undergoing the operation of having a guinea-worm cut out, during which the blood got on his dhotee; but the witnesses he called to prove this failed to make it probable that any blood could

* *Letter from the Session Judge to the Civil Surgeon.*—I have the honour to request you will have the goodness to examine the accompanying dhotee, to ascertain if the stains on it at the end are blood, and let me know the result.

Deposition of the Civil Surgeon.—George Feddes Forbes, Civil Surgeon of Dharwar, Christian, age 41, resident in Dharwar, having been duly sworn, deposes as follows:—

I have carefully examined this dhotur, and find it stained with blood on one corner which I now point out. The extent of the stains was about as much again as is now present; the remainder I used in analysis. The cloth otherwise bears a number of suspicious looking spots, but on examination these are found not to be blood-stains.

I cannot tell whether it is the blood of a human being or of an animal.

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have reached the prisoner's dhotee on that occasion, for they show that the worm was cut out of his friend's groin, or the upper part of his thigh, and that this friend was lying on his back, and that the prisoner was sitting at his head at the time the operation was performed; so that, as it is also shown that no blood spouted from the cut, it was impossible any could have reached him, as stated.

It is shown by the Kotwal and witness No. 10 that this dhotee was found hanging up in the prisoner's house, while the prisoner says it was taken from his person; but he does not attempt to prove this, and it is to be concluded, therefore, that it was not possible to do so. In addition, therefore, to the proof above given, that the blood could not have reached him when attending on his friend, there appears every reason to believe that this particular dhotee was actually not on him at that time, for he was certainly arrested only two or three hours after, and in this case of course it was quite impossible that the blood should have got on it in the way he would make out. If, however, the dhotee had never been worn by him on the day of the murder, it is incredible that he could have overlooked so obvious an answer to the inference drawn from the spots of blood upon it; and he had ample means of proving this, if it had been true, as his mother, his brother, and the man Goorwya were all living with him, and present in his house on that day; and the Session Judge thinks, therefore, it may be concluded that the dhotee was worn by the prisoner on the day of the murder, and that it got stained with blood during the murder, and that it was afterwards hung up by the prisoner in his house, and that when the blood was observed on it, he put forward the explanation above discussed to account for it.

The next point in evidence against the prisoner is the discovery of two prints of a man's left foot close to the

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place where the murder was committed. This is not evidence which can generally be relied on much; but in this instance it is shown that the persons who compared the prints thus found with the prisoner's feet did not content themselves with simply measuring the print and the prisoner's foot roughly with pieces of twigs broken off at the right length, as is usually done, but they both (witnesses Nos. 6 and 7) depose that the prisoner was made to put his foot down on the fine sand near the original impression, and that the original and the new impression agreed. The Session Judge, therefore, is of opinion that some weight must be allowed in this instance to the resemblance of these foot-prints to that made by the prisoner's foot.

It is then shown by witness No. 12, that on the Wednesday when the murder was committed, he met the prisoner Govinda just outside the Nowloor entrance to Dharwar, carrying the child with him, and that it was then about half-past eleven, and that the prisoner was going toward the Mylarling Hill. The witness also deposes that he saw the prisoner No. 2 (Goolya), and Eraya, a brother of prisoner No. 1, following.

The witness No. 13 shows, that when returning home with his cattle in the middle of the day on Wednesday, he met the prisoner Govinda with the child on his shoulder, and that the prisoner Govinda said he was taking him to Someshwur. The witness describes the place of meeting as underneath the Mylarling Hill, and on the road between it and Bheemana Naique's garden, which is a short cut from the Nowloor gate of Dharwar to the Hooblee road; and he states that prisoner No. 2 and the boy Eraya were at a little distance behind, but rather off the road.

The witness No. 14 shows, that when returning from the temple at Noogeekerya, a small village about three miles from Dharwar, he met the prisoner Govinda near

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a small tank, which is close to the second milestone on the Hooblee road, carrying the child on his shoulder, and that the prisoner told him, in answer to a question, that he was taking the child to his parents at Someshwur. This witness also states that he saw the prisoner turn off the Noogeekerya road towards Ateekol, and that prisoner No. 2 (Goolya) and Eraya were crossing the low grounds to his right as he passed along the bank of the Oopardee Tulao, so that they were considerably behind prisoner No. 1 (Govinda).

The witnesses Nos. 15 and 16 show that they went out together to pick up cowdung on the hilly ground on the right of the Hooblee road, and that they went as far as the ground belonging to the Noogeekerya village, and that on their return at about 12 o'clock they met the prisoner Govinda carrying Dhasapa's child on his shoulder, who said, on being spoken to by one of them, that he was going to Noogeekerya. These witnesses depose that they saw prisoner No. 2 (Goolya) in front of prisoner No. 1 (Govinda), and they do not mention the boy Eraya at all.

It is then shown by witness No 17, that on this day, at some little time after 12 o'clock, she met the prisoner Govinda and the child, when she was returning from washing clothes at the Ateekol Nulla. She met him on a pathway beyond the ravine where the murder was committed, and was told by him that he was going to Hoskutee, another small village neighbouring to Dharwar. She states, also, that some way behind him she met the prisoner No. 2 (Goolya), and still further on (where the new Kulgutgee road reaches the top of the hill) the boy Eraya.

The evidence of these witnesses is very important, and the Session Judge can see no reason whatever for doubting its truth. That it was not given for some days after the murder is too common an occurrence in such matters

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to excite surprise, and the witnesses seem to have been able to state with sufficient accuracy the time at which they met the prisoner.

Now it is remarkable that, with the exception of witnesses Nos. 14 and 17, none of the others met him going in a direction leading immediately to the ravine where the murder took place; and this, with the manner in which their descriptions differ about the positions of prisoner No. 2 (Goolya) and the boy Eraya, as regards the prisoner No. 1, appears to the Session Judge to show that their evidence has not been preconcerted.

The Nowloor entrance to Dharwar spoken of in the evidence is where the old southern road left the town, and it is the nearest road to the Mylarling Hill (the hill with a temple on it to the left of the road to Hooblee). The prisoner appears to have gone by the path between Bheemana Naique's garden and this hill, and then, turning to the right beyond it, to have crossed the Hooblee road at a little tank on the left of it, called the Oopardee Tulao—this is the road to Someshwur and Noogeekerya; and further on, it goes straight on at right angles with the Hooblee road for some distance; but witness No. 14 states that he saw the prisoner turn off this road and go towards Ateekol. The Session Judge thought at first that this witness must have stated more than he could possibly have known; but on examining the ground he convinced himself that the witness could have seen the prisoner for some considerable distance after leaving the road to Someshwur; and the road thus indicated as taken by the prisoner accounts for the witnesses Nos. 15 and 16 having met him where they did. It appears that they started from Dharwar by crossing the Hooblee road, and turning off it a little way behind Shreeneewas Row's well; that they then followed the direction of the new road to Kulgutgee, leaving the Gangee Tulao on the left, and going over the hill just above it on the right;

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that as they were returning home from Noogeekerya, they met the prisoner coming towards them down this hill on the pathway leading to Noogeekerya. The place which they describe as that where they met the prisoner is so high up this hill that the Session Judge could not account for his having been met there without the evidence of the witness No. 14, which showed that the prisoner turned off the regular road to Noogeekerya, and went towards Ateekol, that is, he turned off to the right over the shoulder of one of the two small hills which rise between the Hooblee road and the new Kulgutgee road, and was thus in the direct and nearest way to the Boogudeekal ravine; and it is evident that, on seeing these women (witnesses Nos. 15 and 16), he must have altered his direction again, and turned down the pathway up which he saw them coming, instead of crossing it, with the object, of course, of not being seen by them going in the direction of the ravine behind him on the right; but an examination of the ground showed that he was not going very much out of his way, for the Session Judge found, by following this road a little, and then turning round and ascending the shoulder of the hill, along the base of which the road to Kulgutgee runs, that there was a direct and easy ascent leading to the pathway to Ateekol, which is quite out of sight of the path the two women were in on their way back to Dharwar.

And it was on the path leading to the Ateekol Nulla, that the prisoner was met by witness No. 17. This Ateekol is the site of a ruined village, the lands of which still retain its name, and consist chiefly of a large valley running nearly east and west close up to the hill on which Dharwar is situated. Into this valley there run several lateral valleys, or ravines, on both sides, and one of the largest of these, on the southern side, is called the Boogudeekal Nulla. Its upper end is skirted by the pathway leading to the Ateekol Nulla from Dharwar.

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The ravine at its upper end is very deep, and the sides are precipitous, and at the bottom the ground is broken into a nulla by the violence of the water which rushes down in the rains. At the time of the murder the bottom of this nulla appears to have been partly fine sand and partly grass. There is one tree in it, the branches of which spread out horizontally, and make a complete shade under it, and it appears that it was concealed within this shade that the murder was committed.

The place where the witness No. 17 met the prisoner was rather beyond the head of the ravine, but a very few minutes would suffice to enable him to get down thence into the ravine and out of her sight after she had passed on a little way.

Having thus proved the prisoner to have been seen at several places on the road to, and at last within a few hundred yards of the ravine where the body of the murdered child was found, it is now necessary to see what the prisoner's defence is. It consists of a denial of the charge, and of an assertion that he was, from 9 A. M. to 1 P. M., in the shop of one Shewbusapa. There can be no doubt that the prisoner was in Dharwar very soon after 1 P. M., but he has altogether failed to prove that any one saw him at this shop later than 11 A. M., and the owner of the shop in question (witness No. 25) deposes that, on his return to it at half-past 12, the prisoner Govinda *was not there*, but that he returned to it at 1 P. M.

Considering, therefore, that this story is thus clearly proved to be untrue, and that in the two hours between 11 A. M. and 1 P. M., there was quite time for him to have gone to the Boogudeekal ravine by the road on which he is described to have been met by the witnesses and to have returned thence, and that the evidence of the witnesses who saw him carrying the child in that direction is entirely trustworthy, and combining this with his

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failure to account for the spots of blood on the dhotee found in his house, and with the resemblance of his foot-print to the foot-prints found near the spot where the murder took place, the Session Judge considers there can be no reasonable doubt that the prisoner did commit the murder with which he is charged.

As, however, the ornaments were not found on him nor in his possession, the charge of robbery is struck out of the charge, and he is convicted alone of murder; in having, on Wednesday, the 9th April 1856, (corresponding with Chuitru Shood 5th, Shuké 1778,) wilfully, and without extenuating cause, deprived of life, in the Boogudeekal Nulla (or Jheel), in the limits of the Village of Ateekol, in the Dharwar Talooka, of the Dharwar Division and Zillah, a boy named Oodapee, son of Dhasunbhut.

The evidence against prisoner No. 2 (Goolya) goes to show that he was seen with prisoner No. 1 (Govinda) on the road towards the ravine where the murder was committed. This is denied by him, but his denial is unsupported, and this certainly throws considerable suspicion upon him; but the Session Judge does not consider it is sufficient for conviction, and he is therefore acquitted and discharged.

And after considering the nature of the crime committed by prisoner No. 1 (Govinda), and the punishment assigned thereto in Regulation XIV. Section XXVI. Clause 4th, of A. D. 1827, the following sentence is passed :—

That you, Govinda bin Bheemapa, be taken to the usual place of execution at Dharwar, and there be hanged by the neck till you are dead. Subject to the confirmation of the Sudder Foujdaree Adawlut.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the confirmation of the Judges of the Sudder

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Foujdaree Adawlut, counterpart of my proceedings in the above case, wherein Govinda bin Bheemapa has been convicted of murder, and sentenced to death.

As the ground spoken of by the witnesses in this case was so close to Dharwar, I beg at the same time to mention that I went over it myself several times, and, after they had given their depositions, I made all the witnesses point out to me the exact places where they said they had met the prisoner. The two women (witnesses Nos. 15 and 16) I made do this separately, keeping one back on the Hooblee road with a Peon, while I made the other one take me over the hill and show me the places beyond it where she had seen the prisoner Goolya and the prisoner Govinda, and when she had done so, I put her out of sight with another Peon, and rode back for the other woman, who showed me exactly the same places as the first witness had already done. So far as it goes, therefore, this was confirmatory of the truth of their story.

I may also mention, that the chief objection to the charge in my opinion at first was that it was doubtful whether the prisoner could have got to the spot where the child was murdered, and yet have returned to Dharwar by the time he is proved to have been there (it is singular that neither of the Vakeels appears to have thought of this); but an examination of the ground showed that it was perfectly possible, for I walked my horse at the slowest pace it could move, with a Peon before me as a check, and it took only three quarters of an hour from the edge of the ravine to the Nowloor entrance of Dharwar, following the circuitous route which the prisoner is shown to have taken by the witnesses, and including two stoppages, where it was difficult to pass a horse along the banks of the tanks. Of course the return home by the direct road would not have taken, at the outside, above half this time.

I am not quite sure whether this description of per-

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W. H. Harrison, Puisne Judge.

sonal inquiry is right on the part of a Session Judge trying a case; but at any rate it is right that the Judges should be aware of its having taken place.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—If the evidence for the prosecution in this case is to be believed, there would remain little doubt of the guilt of the prisoner. Six persons depose to having met him carrying the lost child, shortly after the time he was missed, in the direction of the spot where the remains are stated to have been next day found; so that he was traced with his victim in his arms to within a very short distance of the scene of the murder, at a time corresponding to that at which it is supposed to have taken place. He failed to show that he was elsewhere between 11 A. M. and 1 P. M. (within which period he might have gone and committed the murder and returned) to the satisfaction of the Session Judge, who also finds that he gave a false account of spots of blood upon his dhotur, of which article, moreover, he denied the ownership when first it was taken possession of by the Police. To this has to be added that a foot-print in the sand of the nulla where the bones were found corresponded with the prisoner's foot in size; and we have the case against him, for the ornaments of the missing child have not been discovered.

In regard to the prisoner's identification by the six witnesses, who depose to seeing him carry the deceased on the day of the murder, I find that the child was missed by his grandmother at about 10 A. M. on the 9th April; that a hue and cry was immediately raised, and that in the evening of that day the prisoner and his younger brother Eraya (who had on the same morning, at 9 or 9½ o'clock, brought back the child to his father's house from "the tank" whither he had strayed) were arrested, apparently on the suggestion of the child's uncle Gopalbhut, one of the complainants. The bones

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were found on the next day, the 10th, but it was not until five, six, eight, and ten days later that these witnesses gave their depositions. Gopalbhut, on the 13th, deposed before the Police Amuldar that he had neither seen any one taking away the child, nor did he know of any one who had, but, if a few days were allowed, he would point out persons who might have seen the child taken away. In a few days, six witnesses were produced, —but I must view their testimony with grave suspicion, which is confirmed on consideration of the improbability that a man would, when carrying out a child to murder it, execute his purpose after meeting at intervals on the way so many persons who could trace him with his victim almost to the very spot selected for the crime. The extent of the blood-stains on the prisoner's dhotur is not clearly set forth. He accounted for these at first by his having been present at the operation of cutting out a guinea-worm, and it is possible that it was so caused, for he proved that he was present at such an operation. I concur with the Session Judge that the correspondence of the foot-print, in the sand of the nulla where the child seems to have been murdered, is not a point to which weight is to be attached, save as corroborative of other testimony; and, in respect to the prisoner's account of himself on the day of the murder—while it is, on the one hand, to be admitted that he does not in a satisfactory manner show where he was between 11 A. M. and 1 P. M. on the 9th, which fixes of itself a suspicion upon him, yet it must be considered, on the other, that there was barely time in these two hours for the intermediate distance to be twice travelled and the crime committed.

In my opinion, the evidence is not sufficient for conviction, and the prisoner must be acquitted.

There is some obscurity in the proceedings in regard to the identification of the remains, which is unsatisfactory.

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The witness No. 18, on the 10th, reported their discovery, and the father and uncle of deceased (witnesses Nos. 4 and 5) state that they proceeded to the spot indicated, or rather to its immediate neighbourhood, where they went to sleep,—for how long it does not appear,—and on awaking found the Police Authorities present. The position of the skeleton is then described, and that of an angrika, and tassel of the string of a 'kurdora,' by which it was recognised. It does not appear in what condition the angrika was—whether clean or dirty, torn or whole. The flesh could not, however, have been picked from the bones without the garment being torn to pieces. Was it then taken off before the murder? If so, was it lying near where the bones were, or nearer to the spot indicated by the foot-print as that where the child was killed? It is alleged for the prisoner that the complainants put the angrika where it was found, and it is to be regretted that there is nothing on record by which this could be refuted; while it is evident that the complainants were on the spot before the Police, and might have put the angrika there, as well as the fruit found also on the spot. It was an omission not to examine the Civil Surgeon as to the skeleton, and to have ascertained from him the period he would have assigned for death; likewise, with reference to the Inquest Reports, whether the skull was fractured, and otherwise what mark there would be on a skull as of the blow of a stone inflicted during life. If, as seems to be alleged by one witness, the Civil Surgeon was present at the nulla where the remains were found, this omission could now be rectified; but under the view I take of the case in general this is unnecessary.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—The prisoner is accused of the wilful murder of a child between the hours of 11 and 1 of the 9th of April 1856.

He and his brother were apprehended on suspicion on

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the evening of the same day. The remains of the child were discovered in a nulla in the limits of the village of Ateekol, in the Talooka of Dharwar, on the 11th, and appear to have been sufficiently identified by the finding of a silk string and an angrika, which were discovered lying near the corpse, which articles are proved to have been worn by, and belonged to the deceased.

Up to the 13th there does not appear to have been any discovery tending in any great degree to implicate the prisoner and his brother. On that day, the deceased's uncle, one of the complainants, deposed that he had no evidence to show that the child had been seen with the prisoner, but he said he would make inquiries on the subject; and finally, within a short time, six witnesses were produced, who have declared that they saw, and most of them spoke to him, in different parts of the road at about the time the murder was supposed to have been perpetrated, with the child on his shoulder, carrying it in the direction of the nulla where the corpse was found, and he was thus traced almost to the very place where the murder was committed. He is unable to give any satisfactory account of himself during this period, and gives an explanation regarding the blood-stain on his dhotur which is proved in evidence to be false; and, added to this, there was a foot-print in the sand near the corpse, which exactly corresponded with one made by himself in the presence of the Police,—a fact which he does not deny.

Now the evidence regarding the prisoner's identification when he was seen and spoken to by the six witnesses carrying the child towards the nulla is only open to suspicion on the ground that their evidence was given some days after the discovery of the corpse. Mr. Harrison also objects to it as untrustworthy because it is improbable that a man carrying a child away to murder it, and having been thus seen on the road by six different

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persons, would at that time carry his villanous intention into execution.

I cannot make up my mind that either of these objections can be held sufficient to render the evidence of the witnesses untrustworthy. There is no reason why the complainants should wish to fix the guilt on the prisoner. He appears to have been a friend of the family, and to have been in the habit of taking the child about with him to 'jatras.' The witnesses themselves were in no way connected with the complainants, and there is no reason why they should give false evidence against the prisoner. The discovery of these witnesses does not appear to me to present any extraordinary feature in the case. Having found the body at a certain spot, it was natural to inquire by whom, when, and under what circumstances the child had been seen on the way from the town to the nulla; and these six persons were found who were able to furnish the information, and they all distinctly state that they met the prisoner carrying the boy in his arms at different parts of the road towards the spot where the body was discovered.

The first of these witnesses is Adwya, and he satisfactorily accounts for his silence by saying that on the very day he saw Govinda carrying away the child, he went away to the village of Mewdga, and did not hear of his death till five or six days afterwards. The second witness, Eruna, says he told Dhasapa at 8 o'clock, but whether he meant the same day, or on what day, is not mentioned; the third, Manapa, was ill for four or five days, and did not mention what he had seen; the fourth, Sawuka, says she told Dhasapa the next day, Thursday; the fifth did not mention what she had seen at all until questioned, her name having been ascertained in consequence of what Sawuka had said; and Rachuwa, the last of the six witnesses, mentioned what she had seen to some people who were discussing the subject, and saying

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Govinda had committed the murder. The evidence, therefore, of these witnesses, arose from inquiries made after a clue to the murder had been obtained, and I really cannot see why they should be disbelieved.

With reference to the second objection, that it was improbable that the prisoner Govinda, having been seen by these witnesses, would have committed the murder, but would have put it off to a more favourable opportunity, I can only say that in almost every case of murder there is something inexplicable in the conduct of the murderer which tells against him in some way; and I do not think this objection should be allowed to weigh in the prisoner's favour.

Being of opinion that the evidence is sufficient to uphold the conviction, I would confirm the conviction and sentence.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

W. E. Frere, Puisne Judge.

Minute by Mr. Frere.—Rachuwa (witness No. 17) met Govinda and the child at a spot not far from where the child is supposed to have been murdered, at past 12 o'clock. At past 1 Kowselawa (witness No. 20), having missed the child, went to Govinda's house, and there found him bathing—so that he had not more than an hour in which to commit the murder, take the ornaments off the child's arms and legs, which we are led to conclude was done with stones, and therefore likely to have occupied some time, return home, and begin to bathe, even supposing he did not take the precaution to conceal the stolen property before he came home. I should have expected something in his manner or answer, thus immediately questioned about the child, that would have given ground for suspicion; but that does not appear to have been the case. The fact of his bathing after having committed the murder leads one to doubt whether the dhotur found could have been stained with

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blood from the child, supposing it proved beyond doubt (which it is not) that blood had flowed when the murder was committed; for had it been so stained, he could hardly have failed to have washed it when bathing. Considering, then, that the bones found are not proved beyond doubt to be those of the child Oodapa; that none of the ornaments the child wore have been discovered; the short time which elapsed between Govinda being said to be last seen with the child and his return home; our ignorance whether the child, if murdered, was suffocated, or killed in any other way; the doubt which must, therefore, arise whether the spots of blood on the dhotur are to be attributed to Govinda's having worn it, if he committed the murder; and that the Session Judge looks upon the foot-print in the sand as only very doubtful proof at best, the evidence certainly does not satisfy me of the prisoner's guilt, and he must be acquitted and discharged.

When a case is referred to me on account of a difference of opinion between my brother Judges, I generally refrain from making any comment on the way in which the case has been tried; but, in justice to Mr. Jones, I must, on this occasion, record my opinion that the way in which he has tried this case reflects great credit upon him, and, with reference to the last paragraph of his letter handing up the case, I would remark, that having very properly made himself acquainted with the locality, the Session Judge should, instead of recording in his finding his own impression of how the accused must have gone from Dharwar to the Boogudeekal nulla, have extracted it from the witnesses; the objection to the course he pursued being that it made him a witness, whom the prisoner could not cross-examine. Had he elicited the information from the witnesses, the prisoner, supposing him to have been guilty, would have had an opportunity of offering suggestions, or obtaining information in his own favour.

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Further Minute by Mr. Harrison.—I omitted to say in my Minute above that no objection could exist to the Judge's visiting the locality. I concur in Mr. Frere's remarks on this point, as well as on the conduct of the trial.

Final Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoner to be discharged.

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TANNA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Reference from the Magistrate of Tanna, E. C. JONES, on the 2nd August 1856, to the Sudder Foujdaree Adawlut, recommending the detention for another year in Jail of Mahadoo bin Joma Patel, tried for Wilful Murder, and acquitted, but remanded to the Magistrate for Precautionary Measures.]

Precautionary Measures.

[*Prisoners.*—No. 1, Mahadoo bin Joma Patel, Kolee, aged 35.

2, Guna bin Dhurma, Kolee, aged 25.

3, Pudma bin Soma, Kolee, aged 42.

Charge.—Wilful murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, on the night of Monday, 22nd January 1855, (corresponding with Magh Shood 5th, Shuké 1776,) at the village of Dewalee, Talooka Tuloja, Zillah Konkun, wilfully, and without justifiable cause, deprived of life Dooka bin Bhoka Patel, aged thirty-five, by striking him with a bill-hook, from the effects of which he then and there died.

The prisoners plead not guilty.

C. M. Harrison, Session Judge.

Finding by the Session Judge.—The prisoners are charged with murder, and plead not guilty.

In this case, the body of the man supposed to have been murdered has not been found, and as, consequently,

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the fact of his death is not placed beyond doubt, the prisoners cannot be convicted of murder.

The repudiated confession of prisoner No. 1 (Mahadoo), however, corroborated as it is (to a certain extent) by the marks of blood found in his house, and the intrigue which is said to have existed between the deceased and his wife, tends to throw the utmost suspicion upon him; and in recording an acquittal, therefore, the Court resolves to remand him to the Magistrate, under the provisions of Section XLI. Regulation XIII. of 1827, for such measures of precaution as may be considered necessary. Prisoners Nos. 2 and 3 (Guna and Pudma) are acquitted, and discharged from the bar.

The principal witness in the case is the wife of prisoner No. 1 (Mahadoo), and her evidence has been most improperly recorded against her husband.]

H. B. Boswell, First Assistant Magistrate.

Letter from the First Assistant Magistrate to the Magistrate.—I have the honour to request you will obtain the necessary sanction for continuing to confine in Jail Mahadoo bin Joma, Patel of Dewalee, Talooka Tuloja, who was committed to Jail on the 8th April 1855, in default of being able to furnish security that he would not ill-treat his wife Deokoo, which there was strong reason to suspect he would do, she having been the principal witness against him in a case in which he was accused of murder, and in which it is probable a conviction would have followed had the body of the man made away with, and supposed to have been murdered, been found. Prisoner's wife was supposed to have had an intimacy with him, and this is the motive assigned for the alleged murder.

Under these circumstances, I am of opinion prisoner is not fit to be at large, unless he can provide the required security, and, failing to do this, I would recommend his being kept in confinement for another year.

He may not then be any fitter to be trusted than now,

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though two years' imprisonment may have some effect on him, but nothing further can be done; and whilst characters not to be trusted are confined in this manner, prisoner seems particularly to require such measures should be adopted in his case.

The proceedings in the case held by the Assistant Magistrate are forwarded herewith, and it is requested they may be returned when done with.

E. C. Jones, Magistrate.

Reference by the Magistrate to the Sudder Foujdaree Adawlut.—Submitted for the sanction of the Judges of the Sudder Foujdaree Adawlut, for the reasons stated in the above letter. The Magistrate is of opinion that the prisoner is an object of public distrust, and ought not to be set at liberty without security.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to certify proceedings.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning this Precept within the specified time, the Magistrate of Tanna begs to certify the proceedings called for in the extract which accompanied this Precept, together with copies of the extract of the Session Judge's proceedings, and the warrant issued by the Acting First Assistant Magistrate, Mr. Forbes, in the case of the prisoner.

Resolution of the Sudder Foujdaree Adawlut.—The Court sanction the detention of prisoner for another year.

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Present, { William Edward Frere, / Robert Keays, } Puisne Judges. 1856 September 4.

Surat.

[Case No. 25 of the Calendar of the Surat Sessions Court for 1856. Committed by the Third Assistant Magistrate, J. Moriarty, on the 29th July 1856. Tried by the Session Judge, H. Hebbert, on the 6th and 7th August 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Prisoners.—No. 1, Jeevunjee Ookurjee, Parsee, aged 22. Murder.

2, Jethio Dhootro, Dooblo, aged 40.

3, Bhungro Dealio, Dooblo, aged 28.

Charge.—Murder; in having, in Sumvut 1912, Ashad Shood 8th, (corresponding with the 10th July 1856,) entered the hut of Guloo, the widow of Ghisasing, in the village of Moticher, Purgunna Mandvee, Zillah Surat, by night, and purposely, and without justifiable or extenuating cause, cut her throat; thus causing her instantaneous death.

Prisoners each and all plead not guilty.

H. Hebbert, Session Judge.

Finding and Sentence by the Sessions Court.—The evidence recorded in this case leaves no doubt the deceased, Baee Guloo, was murdered on the night, and in the manner set forth in the charge. Four of the witnesses examined for the prosecution, Lukhee, Rutnee, Khunio, and Kalio (Nos. 5 to 8), slept in the same room with her; but they have deposed they were not in any way disturbed during the night, and that they only became aware of what had occurred when they got up in the morning, and found her a corpse. The present depositions of these individuals differ, however, from those they gave in the first instance before the Joint Police Amuldar and Police Amuldar. Two of them then said they saw the three prisoners at the bar murder the deceased,—the prisoner No. 2 (Jethio) holding her hands, and Bhungro (prisoner No. 3) holding her legs, whilst

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Jeevunjee (prisoner No. 1) cut her throat. A third said he had seen the prisoners departing from the deceased's hut; and the fourth said one of the first named had told him, on awakening him, the three prisoners had committed the murder. On this information, the prisoners were apprehended, when two of them, Jethio and Bhungro, (prisoners Nos. 2 and 3) confessed, as usual. These two have since retracted their confessions, and now assert they were extorted. The witnesses for the prosecution above alluded to, as also a fifth, Sonio (No. 9), assign a similar reason for their having at first implicated the prisoners.

Such being the facts, the question is, how far is there ground for believing any violence was used towards the witnesses and prisoners in question? and again, if no violence was used, how far are the confessions of the said prisoners corroborated by circumstances?

The two witnesses Doolubh Huree and Ooka Daujal (Nos. 15 and 16) have deposed that they were present during the whole inquiry made the day after the murder, and that no violence was used towards any one; more-over, that had any been used they should have heard of it, but did not. The Court believes these men. The two prisoners who confessed are Dooblos, and obviously from their appearance, and from their own account of the matter, are most rude and ignorant,—just the sort of persons to be made use of as tools in the way they say they were; and afterwards, on the first blush of the thing, before instigated to do otherwise, to confess to the facts. Again, whatever may be the faults of the Police, the Court in its experience has no reason to think they used violence to extort false and unwilling evidence. And again, the witnesses for the prosecution being of the same stamp as the prisoners Jethio and Bhungro (Nos. 2 and 3), are, in the Court's judgment, just as likely to have been subsequently bought off or intimidated into

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perjuring themselves, as those prisoners to have been coerced into confessing. On these grounds, the Court rejects the plea of violence having been used towards any of the parties.

The prisoners Nos. 2 and 3 (Jethio and Bhungro) in their confessions state they obtained some reeds and the leaves of some 'cudjans' from the house of the witness No. 14 (Wittul Havildar), which they lit at a smouldering fire at the door of the deceased's hut, on their arrival there, and that the prisoner No. 1 (Jeevunjee) cut deceased's throat, using two knives, a large and a small one, in the operation, after which he gave her a cut on her chin. The evidence for the prosecution shows there were reeds and cudjan leaves to be had at the Havildar's, his house having been pulled down prior to its reconstruction; also that there was a smouldering fire burning at deceased's door, and that certain reeds produced before the Court, one of which has the marks of fire on it, were found in deceased's hut the following morning. The evidence for the prosecution further shows that stains of blood are to be found on the trousers the prisoner No. 1 (Jeevunjee) admits he had on the night in question, of which stains he can give no satisfactory explanation; also that two knives, a large and a small one, were found in the house of prisoner No. 1 (Jeevunjee), and that two of the deceased's teeth were broken, evidently by the blow on her chin. The prisoner No. 3 (Bhungro), in his confession, has further stated the reason deceased was murdered to have been the belief she was a witch; and there appears to be no room for doubting the motive was revenge, not robbery. These are corroborative circumstances, that quite satisfy the Court the confessions of prisoners Nos. 2 and 3 (Jethio and Bhungro) are true, and that they were *participes criminis*.

Although, as above set forth, the Court considers the facts of blood being found on his trousers, and of the

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knives produced being found in his house, as strongly corroborative of the truth of the confessions of the prisoners Nos. 2 and 3 (Jethio and Bhungro); still, the Court does not consider these facts alone sufficient to warrant the conviction of the prisoner No. 1 (Jeevunjee). The confessions of his fellow-prisoners of course cannot weigh against him, and the witnesses for the prosecution having, as the Court believes, been tampered with, there is no evidence against him; therefore, the Court feels it must acquit him.

The Court had thought of admitting one of the two prisoners Nos. 2 and 3 (Jethio or Bhungro) as Queen's evidence if either of them would have consented to tell the truth; but, on further consideration, it held that if the witnesses for the prosecution stuck to their last version of the matter, as they have done, there would be nothing sufficient to corroborate his evidence; and that if the witnesses for the prosecution returned to their first version of the matter, there would be sufficient evidence to convict the prisoner No. 1 (Jeevunjee); without doing this, therefore, the Court did not carry out its idea.

Under the above view of the case, the prisoner No. 1 (Jeevunjee) is acquitted and discharged, and the prisoners Nos. 2 and 3 (Jethio and Bhungro) convicted of murder, as charged; in having, in Sumvut 1912, Ashad Shood 8th, (corresponding with the 10th July 1856,) entered the hut of Guloo, the widow of Ghisasing, in the village of Moticher, Purgunna Mandvee, Zillah Surat, by night, and purposely, and without justifiable or extenuating cause, cut her throat; thus causing her instantaneous death.

Taking the confessions of prisoners Nos. 2 and 3 (Jethio and Bhungro) as a whole, the Court considers they acted more in utter slavish ignorance than in malice; therefore, that a milder punishment than usual will meet the case.

The Court, therefore, subject to the confirmation of

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the Judges of the Sudder Foujdaree Adawlut, under Regulation XIII. of 1831, Section IV., passes the following sentence :—

That you, Jethio Dhootro and Bhungro Dealio, be imprisoned each for twelve (12) months, in solitary confinement, and also that you each receive twenty-five (25) lashes with the cat-o'-nine-tails, under Regulation XIV. of 1827, Section XXVI. Clause 4th.

* * * * * * * *

The Court will send the witnesses for the prosecution, Lukhee, Rutnee, Khunio, Kalio, and Sonio, to the Magistrate, in order to his preparing a charge of perjury against them, if he find he can substantiate the same.

The Court cannot conclude without remarking on the irregular and apparently hasty manner in which the Third Assistant Magistrate's proceedings are drawn up. In most instances the age of the witness examined is not given.

On the resumption of the proceedings, after an adjournment, no mention is made of the prisoners being again brought up, nor of the reproduction of the property before him; whilst lastly, and above all, the substance of the different depositions, and of the prisoner's statements given, is so meagre and unsatisfactory as to be practically useless. The Court trusts these errors and omissions will not recur.

R. Keays, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Keays.—After a careful consideration of all the papers in this case, I find myself unable to concur in the conviction of the prisoners Bhungro and Jethio. It rests entirely upon their retracted confessions—confessions which, from the very first time they appeared before European Authority, they have stoutly denied. The story they tell, it will be observed, corresponds in the minutest particulars, and is, moreover, improbable, more particularly that part of it about the use of the two knives.

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The murderer is alleged, after having plunged the larger knife in his victim's throat, to have pulled it out in order that he might use the smaller one. I think that these prisoners should be acquitted also.

Resolution of the Sudder Foujdaree Adawlut.—The Court find that in this case there is no evidence against the prisoners Jethio and Bhungro, except their bald confessions, which they retracted before the Assistant Magistrate. The conviction and sentence are, therefore, annulled, and the prisoners to be discharged.

The Session Judge is to be requested to report the result of his sending the witnesses Lukhee, Rutnee, Khunio, Kalio, and Sonio to the Magistrate, and, if these men were not committed for trial, to ascertain and inform the Court why they were not.

The Session Judge, in his remarks upon the Assistant Magistrate's proceedings, appears to the Court to require more form to be observed in the English record than, in their opinion, either the Circular calls for, or is desirable. They think it is quite sufficient for the Assistant Magistrate to record in English the name of the witness, and as much of his deposition as he thinks fit, or as little as he pleases, more than is absolutely necessary to elucidate the case.

The Court would omit the first paragraph, as shown in the proceedings of the Assistant Magistrate in this case, of each deposition beginning with "read and recorded," except the name, as it is hardly ever requisite to know the rest, and if it is, it may be found in the vernacular; and, instead of insisting upon a record, which the Court see is now rapidly descending into a mere matter of form, they would let the Assistant Magistrates keep their English record in the way each one liked best, insisting only that it should contain every information connected with the case, and showed that the Assistant Magistrate understood it, and did not merely translate the depositions,

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and wind up, as some Assistant Magistrates do, after finishing a catalogue of the witnesses with—"Prisoners are committed on the foregoing evidence for trial to the Sessions Court, before which they intimate they have no witnesses to call."

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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RUTNAGHERRY.

[Case No. 15 of the Calendar of the Rutnagherry Sessions Court for 1856. Committed by the Deputy Magistrate, J. H. TROTT, on the 12th February 1856. Tried by the Acting Senior Assistant Session Judge, R. H. PINHEY, on the 2nd May 1856. Reviewed by the Acting Session Judge of the Konkun, H. P. ST.G. TUCKER, on the 17th May 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner Ramchunder Huree.]

Forgery; and knowingly Making a Fraudulent Use of two Forged Documents.

Prisoners.—No. 1, Ramchunder Huree Deshpanday, Brahmin, aged 29.

2, Bala, Son of Mahomed Hosein Bondray, Musulman, aged 45.

Charge.—Prisoner No. 1 is charged with forgery (Regulation XIV. A. D. 1827, Section XVII. Clause 1st); in that he did, on Sunday, the 11th day of November A. D. 1855, (corresponding with the Hindoo date Kartik Shood 2nd, Shuké 1777, Nulnam Sumvut,) in his house, in the town of Sitowray, in the Sitowray Division of the Rutnagherry District of the Rutnagherry Collectorate, fabricate two documents, one for Rs. 1,400 and the other for Rs. 1,730-6-3, purporting to have been passed by the prosecutor Goolame, son of Ebrahim Lala, of Rutnagherry, to prisoner No. 2 (Bala, son of Mahomed Hosein Bondray) in satisfaction of debts due by the said prisoner No. 2 (Bala, son of Mahomed Hosein Bondray) to the said prosecutor Goolame, son of Ebrahim Lala, of Rutnagherry.

Prisoner No. 2 is charged with knowingly making a

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Forgery; and knowingly Making a Fraudulent Use of two Forged Documents.

fraudulent use of two forged documents (Regulation XIV. of 1827, Section XVII. Clause 2nd); in that he did, on Tuesday, the 8th day of January 1856, (corresponding with the Hindoo date Poush Shood 1st, Shuké 1777, Nulnam Sumvut,) produce the above-described two documents before Henry Pendock St.George Tucker, Esq., the Senior Assistant Judge of the Konkun, at his Court in Rutnagherry, in the Rutnagherry District of the Rutnagherry Collectorate, as proof against a motion for enforcing execution of a decree passed in a civil suit made by the aforesaid prosecutor Goolame, son of Ebrahim Lala, against him (prisoner No. 2), for the recovery of Rs. 1,853-2-0, with intent to show that he had effected a compromise with the aforesaid prosecutor (Lala), and had already cleared off the debt which formed the ground of the action of the aforesaid prosecutor (Lala).

R. H. Pinhey, Acting Senior Assistant Session Judge.

Finding and Sentence by the Acting Senior Assistant Session Judge.—Prisoner No. 1 is charged with forgery, and prisoner No. 2 is charged with the application of forgery to fraudulent purposes.

Both prisoners plead not guilty.

The main facts of this case are so very palpable, that but few words are necessary for their relation. Prisoner No. 2 made a petition to the Senior Assistant Judge, presenting therewith two documents, which he professed were granted to him by one Goolame Lala as acknowledgments in full of all monies due by him to the said Goolame Lala.

These documents Goolame Lala denounces as forgeries. Witnesses Nos. 8 and 9 (Bhikajee Babjee and Ragho Krishn), who are acquainted with Goolame Lala's writing, positively depose that the two documents are not signed by Goolame Lala, and that they are in the writing (signature and all) of prisoner No. 1; and prisoner No. 1 himself admits having written both documents, signature included.

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A comparison of signatures is never a very satisfactory test of the genuineness of signature. It is, however, necessary to record, for as much as it is worth, that the signature to the two documents alleged to have been forged differ from Goolame's signature to his deposition on the original motion for execution of his decree, shown to him in the course of his examination, as much as any two signatures well can.

A more satisfactory conclusion is derivable from an examination of the signatures on the two documents alleged to be forgeries by themselves and apart from all collateral evidence. From these three facts are self-evident,—1*st*, that no man of prosecutor's age could have written them; 2*nd*, that no Mussulman could have written them; and 3*rd*, that in both documents, the signatures and the body of the documents being in the same handwriting, and one of them purporting to have been written by one Dhakta, it follows that neither one or both of the names of Goolame and Dhakta were forged.

Prisoner No. 1, in his defence, admits that he wrote both documents, but urges that he merely copied them at the request of prisoner No. 2; that, although it is usual to write the word "copy" on a copy, he omitted this word by accident, and that two persons were present at the time the copies were made by him. In considering this defence, the Court remarks that a weaker defence could not be urged by the most ignorant man. That prisoner No. 1 is not an ignorant man, that he is a Deshpanday by birth, and representative of his family to Government by election, and that his defence is, therefore, in itself improbable. It is equally unsupported by proof. He produced two witnesses said to have been present while he made the copies: one of these denies having ever been present on any such occasion; the other is the brother of prisoner No. 1, and declares the first witness was present when prisoner No. 2 brought

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two documents, which prisoner No. 1 copied. He admits, however, that he did not examine these documents himself.

Prisoner No. 1 is therefore convicted of forgery; in that he did, on Sunday, the 11th day of November, A. D. 1855, (corresponding with the Hindoo date Kartik Shood 2nd, Shuké 1777, Nulnam Sumvut,) in his house, in the town of Sitowray, in the Sitowray Division of the Rutnagherry District of the Rutnagherry Collectorate, fabricate two documents, one for Rs. 1,400 and the other for Rs. 1,730-6-3, purporting to have been passed by the prosecutor Goolame, son of Ebrahim Lala, of Rutnagherry, to prisoner No. 2 (Bala, son of Mahomed Hosein Bondray) in satisfaction of debts due by the said prisoner No. 2 (Bala, son of Mahomed Hosein Bondray) to the said prosecutor Goolame, son of Ebrahim Lala, of Rutnagherry.

Prisoner No. 2 admits that he presented the two documents (above pronounced forgeries) as proof before the Senior Assistant Judge. At that time, and subsequently, he declared positively that they were true original documents. Before the Court he affirmed his previous statement, but afterwards suggested the possibility of their being copies substituted for the originals by Ragho Krishn, to whose house he one day took them. This is no defence at all, and, even if admissible, would be incredible, as prisoner No. 2 can read and write, and must, therefore, have been able to see that the documents which he presented were not originals, had they been copies substituted as he suggests.

Prisoner No. 2 is, therefore, convicted of the wilful application of forgeries to purposes of fraud; in that he did, on Tuesday, the 8th day of January, A. D. 1856, (corresponding with the Hindoo date Poush Shood 1st, Shuké 1777, Nulnam Sumvut,) produce the above-described two documents before H. P. St.G. Tucker,

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Esq., the Senior Assistant Judge of the Konkun, at his Court in Rutnagherry, District Rutnagherry, of the Rutnagherry Collectorate, as proof against a motion for enforcing execution of a decree passed in a civil suit made by the aforesaid prosecutor (Goolame, son of Ebrahim Lala), against him (prisoner No. 2) for the recovery of Rs. 1,853-2-0, with intent to show that he had effected a compromise with the aforesaid prosecutor (Lala), and had already cleared off the debt which formed the ground of the action of the aforesaid prosecutor (Lala).

After considering the nature of the offences committed by prisoners, and the punishment assigned thereto in Clauses 2nd and 3rd, Section XVII. Regulation XIV. A. D. 1827, the Court passes the following sentence :—

That you, prisoner No. 1 (Ramchunder Huree), be imprisoned and kept to hard labour for eighteen (18) months, and that you, prisoner No. 2 (Bala, son of Mahomed Hosein Bondray), be imprisoned for two (2) years, of which the last month will be in solitary confinement, and the rest with hard labour.

* * * * * *

The Deputy Magistrate has taken great pains in the preparation of this case, and his very elaborate proceedings have greatly assisted the Sessions Court during the trial; but the Sessions Court would beg to point out to the Deputy Magistrate an erroneous application of the word "caste," which is very common, but nevertheless positively wrong. The prosecutor and prisoner No. 2 are described, through the English and Murathee papers in the case, as being of the Mussulman caste. Now Mahomedanism is not a caste but a creed, and therefore both the prosecutor and prisoner No. 2 should have been represented as being of the Mahomedan religion, and of the Shek sect, as required by Clause 1st, Section XXXVI. Regulation XIII. A. D. 1827.

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H. P. St.G. Tucker, Acting Session Judge.

Reviewed by the Acting Session Judge.—I see no reason to interfere in this case. It is clearly established that the note is a forgery, and the prisoner Ramchunder's account of the part he played in its fabrication is not credible. The only point in his favour is that there is no dissimilarity in the handwriting of the body of the receipt and of the signature, although the receipt purports to have been written by one person and signed by another. This, however, only betrays the clumsiness of the fabrication. If we believe the prisoner's story, we must suppose either that a real receipt was in existence, which was brought to him to copy, or that he made his transcript from another fabricated one. If a real receipt did exist, the prisoner No. 2 could have had no motive for substituting the present fabricated one in its place; and if he had previously fabricated a document of the kind, it is not easy to see why he should have applied to the Deshpanday at all.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause whatever for interference.

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SHOLAPORE.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 24 of the Criminal Return of the Magistrate of Sholapore for July 1856. Tried by the Deputy Magistrate, W. RAYMER, on the 16th July 1856. Confirmed by the Magistrate, W. A. GOLDFINCH, on the 17th July 1856. Report and proceedings certified, on the petition of Husan wulud Shaik Ali.]

Appropriation of Property by Breach of Trust.

Prisoners.—No. 1, Goorapa bin Narainapa, Koonbee, aged 50.

2, Shaik Hyder wulud Shaik Ismal, Mussulman, aged 25.

3, Syed Esoop wulud Sooban Ali Saheb, Mussulman, aged 18.

Charge.—Appropriation of property by breach of trust

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SHOLAPORE.

Appropriation of Property by Breach of Trust.

(Regulation XIV. A. D. 1827, Section XL.); in having, on Friday, the 5th October 1855, (corresponding with Bhadrupud Wud 10th, Shuké 1777,) in the Lines of the 8th Regiment Madras Light Cavalry, at Sholapore, in the Talooka and Zillah of Sholapore, been entrusted, prisoner No. 1, with his son Moneapa (absconded), by complainant Shaik Ahmed wulud Raja Saheb Korashee, with two carts and five bullocks, valued at Rs. 157; prisoner No. 2, by the said complainant Shaik Ahmed, with a cart and two bullocks, belonging to his sister Pachabee, valued at Rs. 55; and prisoner No. 3, by complainant Syed Esoof wulud Syed Abdool Rahimon, with a cart and two bullocks, valued at Rs. 85, to take on hire to Seroor Ghodnudee, in the Ahmednuggur Zillah, and to return within eighteen days: they, instead of doing so, proceeded to Poona, and other places, and eventually mortgaged the carts, with eight bullocks, to Husan wulud Shaik Ali Cowdee, at Bhewndy, Zillah Tanna, for Rs. 67, and did thereby fraudulently keep them from their owners, the aforesaid complainants.

Prisoners plead not guilty.

W. Raymer, Deputy Magistrate.
W. A. Goldfinch, Magistrate.

Finding and Sentence by the Deputy Magistrate, confirmed by the Magistrate.—Upon the grounds of prisoners' plea of guilty, after hearing the evidence, and giving confessions, the Deputy Magistrate convicts them of appropriation of property by breach of trust, as charged; and as they have, by their fraudulent conduct, caused their employers considerable loss, that circumstance will also be taken into consideration in passing sentence.

That prisoner No. 1 (Goorapa bin Narainapa), who appears to have taken the most prominent part in the above affair, be imprisoned, and kept to hard labour for a period of four (4) months, and that he thereafter pay a fine of forty (40) rupees, or, in default, that he be imprisoned a further period of two (2) months, with hard

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labour; that prisoner No. 2 (Shaik Hyder wulud Shaik Esmal), and prisoner No. 3 (Syed Esoof wulud Sooban Ali Saheb), be imprisoned and kept to hard labour each for three (3) months, and that they each pay a fine of twenty (20) rupees, or, in default, that they be respectively imprisoned, with hard labour, for a further period of one (1) month, under Regulation XIV. A. D. 1827, Section XL. Subject to the confirmation of the Magistrate. (Regulation IV. of 1830, Section III.)

In the event of the fines being paid, Rs. 40 to be paid to complainant Shaik Ahmed, and Rs. 20 each to his sister Pachabee and complainant Syed Esoof, or such portion thereof as may be realised to be awarded them, in proportion to the foregoing sums, as compensation, three months after this date. (Regulation XII. Section XIII. Clause 1st.)

Wrote the following letter, No. 123, to the Magistrate of Mhow, requesting that a cart and bullock, belonging to Shaik Ahmed Karoshee, Subedar Major, said by prisoner No. 1 to have been left by him, the former with a Mussulman Sootar, name unknown, and the latter with Dongur Sett, at Joojree, Talooka Mowunpoor, Zillah Mhow; and a further letter, No. 124, to the Magistrate of Poona, with regard to another bullock, left with a Dulal, name unknown, at Bhowanee Péta, in the city of Poona, being sold by public auction, and the proceeds remitted to the Deputy Magistrate, for payment to Shaik Ahmed.

Wrote letter to the Magistrate of Tanna, forwarding the sum of Rs. 67, with a request that he will, after due inquiry, pay that sum to Husan wulud Shaik Ali Cowdee, the party to whom it would appear prisoners had mortgaged the carts, &c.

Precept issued to the Magistrate of Tanna.—You are requested to report upon the matter set forth in the accompanying petition, presented to this Court by Husan

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wulud Shaik Ali, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Magistrate of Tanna to the Precept of the Sudder Foujdaree Adawlut.—With reference to the petition from Husan wulud Shaik Ali, which accompanied this Precept, and which is now returned, the Magistrate of Tanna begs to report that, on the 19th of May last, he received a letter No. 92, dated 13th May 1856, from the Hoozoor Deputy Magistrate of Sholapore, forwarding a deposition made before him by Subedar Major Shaik Ahmed Korashee, declaring that his servant Goorapa, and three others, who had been entrusted by him with four carts and bullocks, with directions to take them to Seroor, and to return within eighteen days to Sholapore, had absconded, and were then in Bhewndy. The Deputy Magistrate requested that the parties might be apprehended, and sent to him with the carts and animals, in order that inquiry might be made touching the complaint. Consequent on this, inquiries were made on the spot, and the Murathee proceedings sent to the Deputy Magistrate on the 28th of the same month, with a request to let the Magistrate know, after perusing the papers, and communicating their contents to the Subedar Major, whether he still required the accused parties to be sent to him as prisoners, with the carts and animals in their possession.

In his reply, No. 98, dated 4th June last, the Deputy Magistrate stated, that having communicated the contents of the papers to the Subedar Major Shaik Ahmed Korashee and Colour Havildar Syed Esoof, he was of opinion, under the circumstances deposed to by them, that it was expedient that the parties should be sent to

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him to answer the charge preferred against them, together with the carts and animals. The accused parties were accordingly forwarded to that Officer in last month, together with four carts and eight bullocks, which they had mortgaged to petitioner. On the petitioner applying to the Magistrate to have the carts restored to him, it was out of the Magistrate's power to comply with the request, because there were *primâ facie* grounds for believing that the carts had been fraudulently withheld from the owner, and that the persons from whom he had received them had no right whatever to dispose of them.

Precept issued to the Magistrate of Tanna.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Husan wulud Shaik Ali, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.*

Return by the Magistrate of Tanna to the Precept of the Sudder Foujdaree Adawlut.—In execution of this Precept within the specified time, the Magistrate of Tanna has the honour to refer the Court to his report No. 1184, dated 15th ultimo, on a similar petition, presented by the same individual, and received with the Court's Precept No. 611, dated 2nd idem, in which report the circumstance of his case has been detailed.

Under date the 16th July 1856, the Deputy Magistrate of Sholapore forwarded a 'hoondee' for Rs. 67, drawn in favour of the petitioner, stating that it was the amount admitted by the prisoner to be due to the peti-

* Another Precept was issued, calling for the proceedings in the case from the Magistrate of Sholapore, who accordingly certified them.

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tioner on account of the cash which they had received from him, on mortgaging the carts, and which he requested might be paid to him, in the event of his claim, on further inquiry, appearing to be just. The Magistrate accordingly sent the hoondee to the Mamlutdar of Bhewndy, with directions to give it to the petitioner, on condition of his giving a receipt in full of the demands against the accused. The petitioner has refused to receive the amount of the hoondee, on the plea that he has appealed to the Sudder Court against the proceedings of the Sholapore Magistrate in removing the carts and bullocks from his charge, and states that, until a final decision was given in the matter, he would not accept the amount.

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The petition which accompanied the Precept is herewith returned.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—Under Clause 2nd, Section XLI. Regulation XIV. Husan wulud Shaik Ali appears to me to have been very fortunate in getting the money from the Subedar; if he has any further claim, he may, under that Clause, sue the persons from whom he took the mortgage.

W. E. Frere, Puisne Judge.

Resolution of the Sudder Foujdaree Adawlut.—Petitions are rejected.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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KAIRA.

[Petition of Verebhaee Eshwurdas to the Sudder Foujdaree Adawlut. Referred for Report to the Magistrate of Kaira, J. R. MORGAN, on the 30th July 1856.]

Fine and Dismissal of a Police Patel.

Petition of Verebhaee Eshwurdas to the Sudder Foujdaree Adawlut.—[Praying that the order of the Magistrate of Kaira, imposing a fine of Rs. 50, and removing

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KAIRA.

Fine and Dismissal of a Police Patel.

him from his office of Mookhee, on a charge not proved against him, may be annulled.]

Precept issued to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Verebhaee Eshwurdas, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

J. R. Morgan, Magistrate.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning this Precept duly executed, the Magistrate of Kaira has the honour to submit the following report on the petition of Verebhaee Eshwurdas, herewith returned.

The petitioner, being the Mookhee of Vugase, in the Nepar Purgunna, having been placed on his trial before the Second Assistant Magistrate on the 21st of February last, on a charge of misconduct and neglect of duty, in not having made proper inquiry into a case of robbery, and in not having used his best endeavours for the apprehension of the suspected parties, was convicted, and sentenced to a fine of Rs. 100, in default to suffer six months' imprisonment, subject to the confirmation of the Magistrate.

On a review of the case, the fine was mitigated to Rs. 50, commutable to a month's imprisonment; and the Magistrate being further of opinion that the misconduct of the prisoner, as apparent from the evidence recorded in the case, was such as to warrant his dismissal from the office of Village Police Officer, applied for the sanction of Government through the Commissioner of Police, for this measure, which was conveyed in a letter No. 440, of the 17th April last, and the petitioner was dismissed from his situation.

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Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause to interfere.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges. 1856 September 11.

NASSICK.

[Case No. 54 of the Calendar of the Ahmednuggur Sessions Court for 1856. Committed by the Assistant Magistrate of Nassick, S. M. PELLY, on the 31st July 1856. Tried by the Session Judge, J. W. WOODCOCK, on the 11th August 1856. Proceedings submitted for the confirmation of the Sudder Foujdaree Adawlut.]

Prisoners.—No. 1, Kasiram wulud Bhika, Koonbee, aged 20. Murder.

2, Nurso wulud Rama, Rajpoot, aged 35.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, on Sunday evening, the 27th July 1856, (corresponding with Ashad Wud 11th, Shuké 1778,) at Mohary, Talooka Dindoree, Zillah Ahmednuggur, taken a child, named Shivria oorf Bala wulud Bapoo, aged about eight years, nephew of Esoo wulud Mahadeo Tailor, inhabitant of Mohary, into a shed belonging to Neoba Deshmook, and there wilfully murdered him,—prisoner No. 1 (Kasiram) twisting the child's neck, and prisoner No. 2 (Nurso) pressing with his fingers on the child's windpipe till death was produced.

Prisoners plead guilty.

Finding and Sentence by the Sessions Court.—This was a cold-blooded murder, for the sake of expensive ornaments, with which the people have been warned not to load their children, so as to invite the cupidity of such men as prisoners. J. W. Woodcock, Session Judge.

Upon their own confession, and the evidence of the witnesses, the prisoners are found guilty of murder; in having, on Sunday evening, the 27th July 1856, (cor-

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responding with Ashad Wud 11th, Shuké 1778,) at Mohary, Talooka Dindoree, Zillah Ahmednuggur, taken a child named Shivria oorf Bala wulud Bapoo, aged about eight years, nephew of Esoo wulud Mahadeo Tailor, inhabitant of Mohary, into a shed belonging to Neoba Deshmook, and there wilfully murdered him,—prisoner No. 1 (Kasiram) twisting the child's neck, and prisoner No. 2 (Nurso) pressing with his fingers on the child's windpipe till death was produced ; and the Court passes the following sentence, under the provisions of Regulation XIV. A. D. 1827, Section XXVI. Clause 4th :—

That you, Kasiram wulud Bhika and Nurso wulud Rama, be taken to the usual place of execution at Ahmednuggur, and there be hung by the neck till you be dead ; which sentence is subject to the final confirmation of the Court of Sudder Foujdaree Adawlut, to which the case will be referred.

* * * * * * *

The Court has the satisfaction of recording the activity of the Police Patel and Koolkurnee of the village in tracing out the murder, and at once apprehending the murderers.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case, the prisoners plead guilty to the murder of a little child for the sake of its ornaments, and the sentence of death awarded must be confirmed.

Resolution of the Sudder Foujdaree Adawlut.—Conviction and sentence confirmed.

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Present, { WILLIAM HENRY HARRISON, / ROBERT KEAYS, } Puisne Judges.

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SHOLAPORE.

[Case No. 52 of the Calendar of the Sholapore Sessions Court for 1856. Committed by the First Assistant Magistrate, J. F. ARMSTRONG, on the 23rd July 1856. Tried by the Session Judge, T. A. COMPTON, on the 5th and 7th August 1856. Proceedings submitted for the confirmation of the Sudder Foujdaree Adawlut.]

Robbery by Day, with Force, accompanied with Murder; and Aiding in the Commission of the above Offence.

Prisoners.—No. 1, Soma wulud Meeajapa, Berud, aged 25.
2, Hiriyuna wulud Jukhupa, Berud, aged 30.
3, Nundowa kom Hunmunta, Berud, aged 45.

Charge.—Prisoners Nos. 1 and 2 (Soma and Hiriyuna) charged, under Clause 1st, Section XXVI. Regulation XIV. of 1827, and Clause 3rd, Section XXXVII., with robbery by day, with force, accompanied with murder; in having, on Tuesday, the 8th July 1856, (corresponding with Ashad Shood 6th, Shuké 1778, Mungulwar,) in the Village of Nawudgee, Talooka Moodebehal, in the Zillah of Sholapore, in the house of the prisoner No. 3 (Nundowa), strangled a little girl, named Bhawarowa, aged nine years, and stolen from her person three gold ornaments, valued at Rs. 11.

Prisoner No. 3 (Nundowa) charged, under Clause 1st, Section XXVI., and Clause 1st, Section I. of Regulation XIV. of 1827, with aiding in the commission of the above offence.

T. A. Compton, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners, Soma wulud Meeajapa, Hiriyuna wulud Jukhupa, and Nundowa kom Hunmunta, are charged, prisoners Nos. 1 and 2 (Soma and Hiriyuna) with robbery by day, with force, accompanied with murder; and prisoner No. 3 (Nundowa) with aiding in the same, and severally plead not guilty.

From the evidence of the parents (witnesses Nos. 5

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and 9) of the deceased Bhawarowa, it appears that she was only nine years of age, and that, on the 8th July 1856, she went out about noon to play as usual with the daughters of the prisoner No. 3 (Nundowa), and when her father Muleshapa (witness No. 5) returned home from his field at sunset, his wife informed him that the deceased was missing. His sister having informed him that Bhawarowa had gone to the house of prisoner No. 3 (Nundowa), he went there to inquire, but the prisoner No. 3 (Nundowa) assured him that she had not seen the deceased. Two days afterwards he heard that her body had been found in the back yard of the house of prisoner No. 3 (Nundowa), and on going to the spot he at once identified the corpse.

Muleshapa adds that, when his daughter left home, she was wearing a pair of gold earrings worth about Rs. 10, two anklets of base silver, and a neck ornament worth Rs. 1, and that, when he found the body, the anklets only remained.

The Inquest Report (No. 4), dated 12th July 1856, proved by the witnesses Nos. 2 and 3 (Sungapa and Mulapa), is to the effect that when the Members of the 'punchayet' examined the body, it was swollen up, and there were black marks and discolorations on the neck resembling those which would be caused by strangulation; the skin of the throat had been rubbed off; the tongue was protruding from the mouth; and the Members of the Court were unquestionably of opinion that the deceased had been murdered for the sake of her ornaments.

The only evidence available against the prisoners Nos. 1 and 2 (Soma and Hiriyuna) is that of Hunmowa (witness No. 6), and as she is the daughter of prisoner No. 3 (Nundowa), and may have been instigated by her mother to accuse the other prisoners, her testimony must necessarily be received with the utmost caution and distrust.

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She affirms, that on the day of the murder, she left her mother's house about noon, for the purpose of carding some wool in one Hunmupa's house, taking the wool with her, and that, when she had finished what she had taken, she returned home for more wool; that on reaching home she found the prisoner No. 3 (Nundowa, her mother) standing in the doorway of their cooking room; that her mother would not let her in, but told her, if she wanted cotton, to apply to Rayowa woman for some; that she (Hunmowa), however, went into the room, and then saw, in the 'deoghur' or idol room, the deceased Bhawarowa on the ground, and the prisoner No. 2 (Hiriyuna) sitting on her chest, whilst the prisoner No. 1 was strangling her with his hands; that the deceased made a horrid noise, and that as her mother told her to leave the house, she went out, and, at her mother's request, did not mention to any one what she had seen.

Hunmowa adds that, two nights after (viz. on the 10th July), the prisoner No. 1 came to their house, and told them that, as their house was in danger of tumbling down, they had better have it repaired, and sleep at his house in the mean time; that they agreed, and that about midnight she got up for a natural purpose, and on going out saw the prisoners Nos. 1 and 2 (Soma and Hiriyuna) go to her mother's house, and that she then ran back to her bed in a fright.

It is, of course, perfectly possible that this evidence is strictly true, and that the murder was committed by the prisoners Nos. 1 and 2 (Soma and Hiriyuna); but it must at the same time be borne in mind that the witness is the daughter of the prisoner No. 3 (Nundowa); and must, therefore, be supposed naturally anxious to screen her mother from punishment at the expense of the other prisoners; furthermore, it is by no means impossible that the witness herself may have aided her mother in the commission of the crime.

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Her evidence against the prisoners Nos. 1 and 2 (Soma and Hiriyuna) is wholly unsupported, except by Bhikshya (witness No. 7), who, however, only states that he saw the prisoners Nos. 1 and 2 (Soma and Hiriyuna) coming out of the house of prisoner No. 3 (Nundowa) about 1 o'clock on the day of the murder.

The witness No. 8 (Sheik Ali) proves that when the house of the prisoner No. 3 (Nundowa) was searched, the spot where the grain jars were kept appeared to have been recently disturbed, and on digging up the place they found the 'angrika,' now in Court, which the parents of the deceased at once identified as having been worn by her on the day she left home.

The prisoners No. 1 (Soma) and No. 2 (Hiriyuna) both deny having been in any way privy to or concerned in the murder, and endeavour to prove an *alibi*, asserting that they were in their fields at the time the murder was committed and during the whole day, having left home at about 9 A. M.; they, however, signally fail in this attempt, and considering the circumstance that they are of the same caste as the prisoner No. 3 (Nundowa), her near neighbours, and on terms of intimacy with her, while the Police Patel (witness No. 10) affirms that they are men of bad character, it cannot be denied that there are very strong grounds for suspicion against them; but the Session Judge is of opinion that the evidence of the sole witness against them cannot be considered independent testimony, and that, unsupported as it is, it would be unsafe in the extreme to rely upon it for their conviction.

It is somewhat remarkable, however, that they do not in their defence advance the plea that Hunmowa accuses them falsely in the hope of exonerating the prisoner No. 3 (Nundowa).

The prisoner No. 3 (Nundowa) stated on the day after the murder, before the District Police Officer of

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Toombgee, that the prisoner No. 2 (Hiriyuna) was sitting in her house, when he observed the deceased Bhawarowa sitting outside, with her gold earrings, &c., and that he immediately proposed to strangle the girl and take the ornaments; that she agreed, and the prisoner No. 2 (Hiriyuna) then went out, stopped the girl's mouth with his hand, dragged her into the house, and strangled her, she, prisoner No. 3 (Nundowa), keeping watch the while in the doorway to see that nobody came. The confession goes on to say that she asked him why he had not taken off the anklets as well as the other ornaments, to which he replied that the anklets were so tight he could not get them off, and that he would accordingly bury the body and wait till decomposition took place; that he then dug a hole in a corner of the room, and buried the body about two 'haths' deep.

On the following day, the prisoner No. 3 (Nundowa) asserted that the prisoner No. 2 (Hiriyuna) did not commit the murder unaided, but was assisted by the prisoner No. 1 (Soma); and she now adheres to this second statement before the Sessions Court, fully admitting that she was a consenting party to the murder, induced thereto by the promises of the prisoners Nos. 1 and 2 (Soma and Hiriyuna), that they would give her one-half of the ornaments.

The Court is not of opinion that there are any grounds for the suspicion that the murder was committed by any of the prisoners through enmity to the father of the deceased, but inclines to the belief that the first statement of prisoner No. 3 (Nundowa) was the true one.

The finding of the body in the back yard of the premises of prisoner No. 3 (Nundowa), only partially covered with rubbish, is only to be accounted for by the supposition that the murderer or murderers were disturbed in their attempt to carry it out of the village, and, under any circumstances, it seems most strange that it should

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have been placed in a situation where it was only partly concealed from view and sure of being discovered.

There seems to be no good reason for suspecting the husband of prisoner No. 3 (Nundowa) of any complicity in the murder, as the Police Patel deposes that directly he discovered the body in the yard of his house, he reported the circumstance; and the Patel further states that the husband is very old and infirm, and subject to asthma.

The prisoners Nos. 1 and 2 (Soma and Hiriyuna) are acquitted, and discharged from the bar, the Session Judge being of opinion that the evidence against them is not only defective but too liable to suspicion to warrant their conviction.

The prisoner No. 3 (Nundowa) is convicted, on her own confession, adhered to before the Sessions Court, and on the evidence against her, of aiding in the commission of murder; in having, on Tuesday, the 8th July 1856, (corresponding with Ashad Shood 6th, Shuké 1778, Mungulwar,) in the village of Nawudgee, Talooka Moodebehal, in the Zillah of Sholapore, in her own house, concerted with some person or persons the murder of one Bhawarowa, daughter of Muleshapa, aged nine years, and kept watch in the doorway of the room while the said person or persons strangled the said Bhawarowa, and thereby deprived her of life then and there, and plundered her person of two gold earrings and a neck ornament, valued at Rs. 11 or thereabouts.

The prisoner No. 3 (Nundowa) distinctly admits having planned and assisted in this revolting murder of a poor girl only nine years of age, in the hope of obtaining the paltry sum of Rs. 5 or thereabouts, and the Session Judge is unable to perceive any one extenuating circumstance in the case, or why the extreme sentence of the law should not be carried out against her.

After a mature consideration of the crime which the prisoner has committed, together with the nature of the

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punishment provided for the same by Clause 4th, Section XXVI. Regulation XIV. of 1827, the Court proceeds to pass the following sentence, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut:— 1856 September 11.

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That you, prisoner Nundowa kom Hunmunta, be taken to the usual place of execution at Sholapore, and there hanged by the neck till you be dead.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—This prisoner has admitted her complicity in the murder of a child, for the sake of its ornaments, and the conviction must be confirmed.

The prisoner ought to have been charged as a principal, and the charge against all should have been "murder, with robbery," not "robbery, with murder."

R. Keays, Puisne Judge.

Minute by Mr. Keays.—After a careful consideration of the evidence in this case, I do not entertain a doubt of the prisoner's guilt. I am of opinion that the conviction is sound. I would mitigate the sentence to transportation.

Resolution of the Sudder Foujdaree Adawlut.—The conviction is confirmed, and the prisoner is sentenced to transportation for life.

The Court observe that the prisoner Nundowa ought to have been charged as a principal, and that the charge against all should have been "murder, with robbery," not "robbery, with murder."

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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BELGAUM.

[Case No. 79 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the First Assistant Magistrate, W. H. HAVELOCK, on the 17th June 1856. Tried by the Session Judge, A. W. JONES, on the 19th, 21st, and 31st July 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, for confirmation.]

Murder.

Prisoner.—Purupa bin Kurebusupa, Lingayet, aged 22.

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Murder.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, on the night of Sunday, 8th June 1856, that is about 2 o'clock in the morning of Monday, 9th June 1856, (corresponding with Jésht Shood 7th, Shuké 1778,) in the house of Mahantapa bin Chumapa, at Bagulkote, in the Bagulkote Talooka, in the Belgaum Division of the Dharwar Zillah, with intent to kill, inflicted several wounds with a large knife on the person of Sungunbusowa kom Mahantapa, from which wounds she, the said Sungunbusowa, died about 5 o'clock in the evening of the said Monday.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoner is charged with murder, and pleads not guilty.

It appears that a man named Mahantapa, of Bagulkote, left that place on the afternoon of Sunday, 8th June 1856, to go to Goobhal, and marry another wife, his first one (whom he left in his house at Bagulkote) having no children; and it further appears from the deposition of this woman that, in the course of this Sunday night, the prisoner before the Court, whom she recognised perfectly by the light of the lamp, came in and tried to make her submit to his embraces, but, on her raising a cry, sat on her, and stabbed her repeatedly with a knife on her head and other places, and then made off, leaving behind him a hatchet and the sheath of the knife with which he had stabbed her.

This deposition was proved before the Court to have been given by this woman while in her full senses, and the witnesses who attested it say she pointed out at the same time the axe and sheath of a knife, before the Court, as those which the prisoner had left in the house.

The woman died in the evening of the next day, and an Inquest was held on her body, the report of which was proved before the Court, and shows that she had

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died of many severe wounds, caused apparently by stabs with a knife.

The evidence regarding the sheath of the knife and the axe found in the house is said by the Assistant Magistrate to be unworthy of credit; but one of the two witnesses examined about them declares he has been used to go to the prisoner's house, and that he has several times seen these two articles there; and the Session Judge cannot suppose this witness would wilfully come forward and depose falsely to a fact of this kind, affecting the life of another man, without any more credible reason than that suggested in a question by the prisoner, viz. that the complainant had bribed him for Rs. 5 to give this evidence. The Session Judge cannot but be of opinion that this is more incredible than that he should be speaking the truth; for if it is true that he was accustomed to go to the prisoner's house, and the prisoner does not deny this in any way, he must have had the opportunity of seeing these things, and could therefore have been able to identify them. The only thing that can be said against the evidence is that it was pointed out by the complainant, instead of having been procured independently by the Police.

It is then shown that the prisoner was arrested at a village some miles from Bagulkote on the Tuesday morning (by a man who deserves some credit, both for causing the arrest and the manner in which it was managed), and from this village the prisoner was taken back to Bagulkote, where his clothes were taken from him; among these is a 'roomal,' on which the Civil Surgeon has deposed* there are two small spots, which

* *Deposition of the Civil Surgeon.*—I have carefully examined all the clothes, now produced, with the view of detecting blood-stains. There is a light roomal, on which were two blood-marks; one still remains, I now point it out; the other I made use of for analysis. The blood appeared to me to have been sprinkled on the roomal, rather than

G. F. Forbes, Civil Surgeon.

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were evidently drops of blood. Now, the prisoner was away from Bagulkote all Monday, and he had therefore the whole of that day to wash or get rid of any stains of blood which there might have been on his other clothes, and this will account for none having been found on them; but it is quite probable that the chance of any blood having spurted on to his roomal or turban may never have occurred to him, and it is evident that it could not attract his notice, as of course he could not see what he wore on his head, and this roomal was proved by witnesses Nos. 17 and 18 to have been taken from the prisoner's head.

The prisoner's defence is that he left Bagulkote at about 3 o'clock in the afternoon of Sunday the 8th June, and went to other villages with clothes which he hawks about for sale. But it is shown that he was seen in Bagulkote by two witnesses as late as 5 P. M. on that day, and one of them also deposes that there was a light in his house as late as 7 P. M., and as no one lives with him, it is not likely this could have been seen there unless he was there himself. Then the witnesses he named before the Magistrate, to prove he was at the village of Kerkulmute on the Monday morning, failed to support his story; but even if they had done so, it would not have availed him, because his having been at the village at 10 or 11 o'clock in the forenoon would not have proved that he could not have been at Bagulkote in the course of the previous night.

communicated by touching a wound. I did not detect a trace of blood on any of the other clothes.

In answer to the prisoner :—

The bite of a bug would not, in my opinion, produce a drop of blood which would communicate a similar stain on cloth, unless the wound was squeezed or pressed to make it bleed. Blood would flow from a wound inflicted by a razor, from which the stain might be communicated. Any wound that would cause blood to drop might produce it.

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Under these circumstances, and considering especially that there seems no reason to doubt that the deceased Sungunbusowa really did name the prisoner as her assailant, or that she would be able to identify him on such an occasion, the Session Judge is of opinion that the evidence is sufficient to warrant the conviction of the prisoner, and he is accordingly convicted of murder; in having, on the night of Sunday, 8th June 1856, *i. e.* about 2 o'clock in the morning of Monday, 9th June 1856, (corresponding with Jéshṫ Shood 7th, Shuké 1778,) in the house of Mahantapa bin Chumapa, at Bagulkote, in the Bagulkote Talooka, in the Belgaum Division of the Dharwar Zillah, with intent to kill, inflicted several wounds with a knife or dagger on the person of Sungunbusowa kom Mahantapa, from which wounds she, the said Sungunbusowa, died about 5 o'clock in the evening of the said Monday.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, the following sentence is passed :—

That you, Purupa bin Kurebusupa, be taken to the common place of execution in Dharwar, and there be hanged by the neck till you are dead. Subject to the confirmation of the Sudder Foujdaree Adawlut.

* * * * * * *

The Session Judge feels obliged to remark that this case was not prepared with proper care. The Police Amuldar did not take any evidence, nor apparently think it necessary to inquire at all of any one in what state the wounded woman was when first found; nor as to the state of the room; nor who was the first person who heard of the crime and came to her assistance; and the Session Judge could not discover, except from the deposition of the deceased, that any one had been to her at all before she gave the deposition.

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The Assistant Magistrate ought to have remarked this, as well as that the Police Amuldar, as far as can be judged from his proceedings at least, had not taken any trouble to ascertain whether any one of the prisoner's neighbours could identify the axe and dagger-sheath found in the room of the wounded woman, and had contented himself with examining the men pointed out by the complainant as capable of giving evidence on the point; and the Session Judge thinks it is no proof that none could have been procured at the time, that the neighbours should deny all power of identifying these articles when applied to a month and a half afterwards, knowing that to admit they could do so would oblige them to start at once for Dharwar, which is full seventy-two miles off.

The Session Judge is also of opinion that the Assistant Magistrate was rather hasty in pronouncing that the clothes presented no subject for suspicion, for the Session Judge himself found no difficulty in discovering the two spots of blood on the roomal when he examined it with the other clothes, notwithstanding that these spots were very small.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The chief evidence against the prisoner in this case is the deposition of the dying woman, stated to have been made before the Police Authorities, that he was the person who wounded her; the other proofs of his guilt being the facts that the marks of two drops of blood were visible on his roomal, and that a knife-sheath and axe found near the corpse are deposed to be his. The Session Judge justly observes that the prisoner had time to wash his clothes, and might probably have overlooked these small stains on his roomal used as a turban. In regard, however, to the testimony as to the knife-sheath and axe, I incline to the Assistant Magistrate's opinion, that little reliance is to be placed upon it.

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The dying deposition of the murdered woman was not taken in the prisoner's presence, and it does not appear that the deponent considered herself dying when she made it. I do not think, therefore, that it can be accepted as valid evidence against the prisoner, and would acquit him.

It seems extraordinary, if the dying declaration be true, that the Police should not have been able to produce proof in this case, for the unfortunate woman's cries must have given alarm. There is nothing on the record to show who first discovered the crime, and when it became known.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—That the deceased was murdered in the manner set forth in the charge there can be no doubt, and the question to be decided is whether the prisoner committed the murder. The evidence that he did so consists of the dying declaration of Sungunbusowa, proved by the evidence of two witnesses to have been given by her before the Police Amuldar, on solemn affirmation, and corroborated first by the evidence of two witnesses, who declare that the axe and the sheath of a knife, which were found lying on the deceased's bedding, belonged to the prisoner. The Assistant Magistrate, in handing the case up for trial, was of opinion that their evidence is untrustworthy. The Session Judge, however, overrules this objection, as he cannot believe that they would tell an untruth about the matter, seeing that a fellow creature's life depended on their evidence. I am sorry to say my experience will not allow me to adopt the Session Judge's view of it. They both say they can identify the hatchet, because it had a new handle. As the prisoner was a cloth-seller, and unlikely to have put the new handle to the hatchet himself, it is to be regretted that some inquiry was not made as to who did, as his evidence would have been very valuable.

The second corroborative circumstance is, that the

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roomal, which is proved to have been taken from the prisoner's person, was ascertained to have been stained by two *drops* of blood; no other traces of blood were found on his clothes. It certainly does appear to me to be strange that these stains were not remarked at the time the clothes were taken from the prisoner's person. They must have been very minute, so much so as to lead to the supposition that it could have been hardly possible for the prisoner to have worn the roomal when the murder was committed, without its having received larger and more numerous marks of blood.

The third corroborative circumstance is, that the prisoner is proved to have given a false account of himself on the Sunday, the night on which the murder was committed. He says he left Bagulkote at 3 P. M. on that day, whereas, from the evidence, it appears he was seen in Bagulkote as late as 7 P. M., and, at a much later period of the night, a light was seen burning in the house.

These are all suspicious circumstances, but insufficient, in my opinion, to justify the conviction on the dying declaration, which was not taken in the presence of the prisoner; and from a question which the deceased is said to have put to the Police Amuldar, viz. "Do you think I can be cured?" I do not think she was under that apprehension of death, at the time she gave it, which would be required to render her declaration admissible in evidence.

Under these circumstances, I think the prisoner should be acquitted.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is acquitted, and ordered to be discharged, for the reasons recorded in the Minutes of the Judges.

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Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

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Belgaum.

[Case No. 27 of the Criminal Return of the Magistrate of Belgaum for March 1856. Tried by the Deputy Magistrate, Raghoba Janardhun, on the 18th, 25th, and 26th March, and 3rd, 10th, 11th, 15th, 18th, 19th, 22nd, and 28th April 1856. Reviewed on appeal by the Magistrate, G. B. S. Karr, on the 10th June 1855. Proceedings certified on the requisition of the Sudder Foujdaree Adawlut, on the petition of Dorabjee Shereearjee.]

Conspiracy.

Prisoners.—No. 1, Nowrojee bin Merwanjee Moodee, Parsee, aged 28.

2, Rama bin Nagapa, Sonar, aged 20.

3, Rama bin Toolgapa, Simpee, aged 28.

Charge.—Conspiracy (Regulation XVII. of 1828); in having, on Friday the 20th April 1855, (corresponding with the Hindoo date Wuishak Shood 4th, Shuké 1776,) at Belgaum, Talooka Padshapoor, Belgaum Division of the Dharwar Zillah, entered into a combination to defeat the ends of public justice, in the following manner:—The prisoner No. 1 wrote a document, or 'khata,' on stamped paper, in the name of Pootlee Baee kom Dorabjee, dated 20th April 1855, stating therein that he borrowed from her the sum of Rs. 268, and authorising her, the said Pootlee Baee, to pay out of the sum so borrowed of her by him (the prisoner No. 1) Rs. 168 to her husband Dorabjee, which sum being the amount of two instalments due to the said Dorabjee on account of a debt due to him by the prisoner No. 1, and the remainder, viz. Rs. 100, he (the prisoner No. 1) received in cash, to be repaid with interest at the rate of one rupee per month per cent. within one month; and the prisoners Nos. 2 and 3, to strengthen the document, signed it as witnesses to the transaction, and which document the prisoner

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Raghoba Janardhun, Deputy Magistrate.

No. 1 produced in the Moonsiff's Court at Belgaum in a suit No. 107, filed by the aforesaid Dorabjee.

The prisoners plead not guilty.

Finding and Sentence by the Deputy Magistrate.—

* * * * * * * *

Under this view of the case, and taking into consideration all the circumstances in connection with it, the Deputy Magistrate has no alternative but to discharge the prisoners Nos. 1, 2, and 3 from the charge laid against them.

It will be seen, from paragraphs 6 and 7 of the finding, that prisoner No. 1 has already made an appeal against the decision of the Moonsiff; and the Judge of Dharwar also called for the papers from the Magistrate, and the Magistrate refused to send them, on the grounds that the Session Judge possesses no authority to call for the proceedings in a case which is in progress. This was referred to the Sudder by the Judge, who also agreed with the Magistrate, but observed that if the Judge had requested the Magistrate to postpone the trial until the appeal case was decided by him, the Magistrate might perhaps have done so. If the Moonsiff of Belgaum had waited until the case was decided agreeably to Circular No. 417, dated 31st January 1850, it would have been better, and when on an appeal decided in favour of the Moonsiff, it would then have been a question for the Judge to say whether the prisoner No. 1 can be charged with perjury and not with forgery, as the Moonsiff did.

It will be seen that the complainant, who is said to be a very respectable person, and who is connected to the prisoner No. 1 by the closest relationship, is nevertheless very desirous, under any circumstances, to see the prisoner No. 1 punished.

The Deputy Magistrate would record here that the prisoner No. 1 (Nowrojee) on one occasion made a complaint to Mr. Havelock, then Acting Magistrate,

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against the Deputy Magistrate, to the effect that he (the Deputy Magistrate) had some dealings with one Dada Naique, a Sowkar of Shapoor, consequently the Deputy Magistrate had decided the case between him and Dada Naique in favour of the latter. Mr. Havelock as'ed Nowrojee what he meant by dealings?—he said, friendship of course. The Acting Magistrate, on the appeal, confirmed the decision of the Deputy Magistrate. But what is to be done in point of justice,—the Deputy Magistrate must discharge his duty with conscientiousness? *

G. B. Seton Karr, Magistrate.

Reviewed on Appeal by the Magistrate.—It was irregular and useless for the Hoozoor Deputy Magistrate to take the Foujdar's statement not on solemn affirmation. The reason given in paragraph 34 for not summoning Purushram to give evidence is insufficient. In paragraph 72 of his finding, the Deputy Magistrate states that the charge of having fabricated the document, which is the subject matter of this case, is not a forgery, because "forgery means the fraudulently making a written instrument to the detriment of another, but that such is not the present case, which is, properly speaking, one of a peculiar nature." This sentence is not very well expressed, and, *as the charge against the prisoner is conspiracy*, it was not necessary for the Deputy Magistrate to undertake to say whether the document which originated the case was or was not a forgery. This document purports to be written by Nowrojee, *and is acknowledged by him*; it was a question for the Moonsiff whether the document was worth anything; but I am at a loss to understand why it should have been made the foundation of a charge of conspiracy. If the document bore Pootlee Baee's name, and the defendant had been accused of having persuaded some persons to join with him to attest the paper, and swear falsely that it had been executed by

* The greater part of the finding, which extends to 89 paragraphs, is necessarily omitted.

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Pootlee Baee, this would have been an accusation of conspiracy; but as this case stands, there was nothing whatever to go upon, and in my opinion the Deputy Magistrate should have refused to entertain the charge. The petitioner Dorabjee is informed that the case has been discharged by the Deputy Magistrate, and that no further order will be made.

Petition of Dorabjee Shereearjee to the Sudder Foujdaree Adawlut.—[Complaining that the case had been improperly dismissed; and praying that an investigation might be ordered.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to certify the papers and proceedings, together with your report upon the matter set forth in the accompanying petition, presented to this Court by Dorabjee Shereearjee, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning the within Precept, the Magistrate of Belgaum has the honour to report that the petitioner Dorabjee Shereearjee, in June 1855, brought an action in the Court of the Moonsiff of Belgaum, to recover a sum of Rs. 758 from Nowrojee Merwanjee and his security, the former of whom replied in his defence that he had already repaid the money, and in support of this assertion produced a stamped paper ('kutha'), dated the 20th April 1855, passed by him to Pootlee Baee, the petitioner's wife, to the effect that he then "borrowed from her Rs. 268, of which sum she would pay her husband Rs. 168, in part liquidation of his (Nowrojee's) debt, and give the remainder, Rs. 100, to him, and

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that he would return the whole amount, together with interest thereon, within one month from that date." He further asserted to the Moonsiff that he got this document back from Pootlee Baee after repaying her the whole sum.

In October following, the Moonsiff passed a decree in the petitioner's favour, a copy of which, together with the kutha above mentioned, he forwarded to the Joint Police Officer of Belgaum, presuming the kutha to have been forged by Nowrojee, against whom he requested the Joint Police Officer to institute criminal proceedings.

The Joint Police Officer accordingly prepared a case against Nowrojee, and the two witnesses who had attested the document, charging the former with forgery, and the latter with having aided in effecting the same; and he committed the case for further investigation before the Hoozoor Deputy Magistrate, Mr. Raghoba Janardhun, who returned it to the Joint Police Officer, directing him to arraign the prisoners on a charge of conspiracy. On this, the Joint Police Officer altered the charge as ordered, and sent up the papers to the Hoozoor Deputy Magistrate, who took up the case on the 18th March last, and finally disposed of it on the 28th April following, his decision being that he discharged the prisoners from the charge laid against them.

Against this decision the petitioner Dorabjee, in May last, appealed to the Magistrate, requesting him to have the defendant Nowrojee punished; but the Magistrate, after reviewing the proceedings, informed the petitioner in reply that no further order would be made.

The papers and proceedings are herewith certified, as required by the Court, and the Magistrate will feel obliged by their being sent back to him when done with. The petition is returned. The delay of two days which has occurred in answering this Precept has been caused by a reference having been made to Dharwar for some of the papers.

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Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

The Magistrate is to be requested to instruct the Deputy Magistrate that he should not return cases to the District Police Officer for the purpose of altering the charge, but alter it himself.

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POONA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case of Annundrow Bhikajee, sentenced by the Assistant Magistrate of Poona, J. S. INVERARITY, on the 14th March 1856, for forfeiture of recognisance bond. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Forfeiture of Recognisance Bond.

Decision by the Assistant Magistrate.—Annundrow Bhikajee, age 45, caste Brahmin, resident of Alla, Talooka Sewnere, is this day received from the District Police Officer of Boree, and is informed that whereas he, under date the 6th June 1855, (corresponding to Jésht Wud 6th, Shuké 1777,) entered into a recognisance bond, that he (Annundrow) would be of good conduct for the space of one year, or that he (Annundrow) would forfeit the sum of Rs. 50, to be commuted, in case of non-payment, to imprisonment for one year; still he, the said Annundrow, was, on the 30th August 1855, (corresponding to Shrawun Wud 3rd, Shuké 1777,) found guilty of an assault, committed on the 20th July 1855, (corresponding to Ashad Shood 6th, Shuké 1777,) and was sentenced to pay a fine of eight rupees, failing payment to suffer fifteen days' imprisonment, in consequence of which the recognisance bond entered into by him (Annundrow) has become forfeited.

Annundrow Bhikajee admits having entered into the recognisance bond, but denies he has since committed any offence.

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POONA.

Forfeiture of Recognisance Bond.

Gunesh Damodhur deposes, on solemn affirmation, and proves the recognisance bond, being one of the witnesses thereto.

Sadasew Vitul deposes, on solemn affirmation, and makes a statement similar to the above.

The recognisance bond is recorded.

The proceedings against Annundrow, signed by the Police Amuldar, read and recorded, and also the order for his being fined Rs. 8, failing payment to be imprisoned for the space of fifteen days, for assault proved against him, he being the ringleader.

Annundrow states that he appealed to the Magistrate against this sentence, but that his petition was rejected; did not commit the assault, so his bond is not forfeited; was told by the Police Amuldar that the bond only applied to robberies, did not understand that it applied to assaults; the bond was taken from him for removing some sticks, a robbery not having been proved against him.

Nurso Gopal, who deposes, on solemn affirmation, that he was Acting Police Amuldar of Boree, and sentenced prisoner as above, proves the above proceedings and warrant; took the bond also from prisoner, and never told him that it only applied to robberies,—it referred to offences of every kind.

Annundrow Bhikajee having nothing further to urge in his defence, the Assistant Magistrate finds it proved that he did enter into a recognisance bond that he would be of good conduct for one year, and that he has since committed an assault; the bond thereupon entered into by Annundrow is declared forfeited, and he is directed to pay a fine of fifty (50) rupees, failing payment to be imprisoned for the space of one year. (Regulation XII. of 1827, Section XXVI. Clause 2nd.)

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

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NASSICK.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case of Munajee wulud Ranojee, sentenced to furnish security, in default to suffer imprisonment, by the Assistant Magistrate of Nassick, on the 10th July 1855. Confirmed by the Joint Magistrate, A. R. GRANT, on the 9th October 1855, requesting sanction of the Sudder Foujdaree Adawlut for the detention of the prisoner for one year.]

Failure to furnish Security for Good Conduct.

Decision by the Assistant Magistrate, confirmed by the Joint Magistrate.—The prisoner in case No. 12 of 1855, by name Munajee wulud Ranojee, caste Wunzary, aged forty-five, business Labourer, inhabitant of Naugaum, Talooka Nassick, was this day received from the Police Amuldar of Nassick with a Mahratta 'yad,' No. 150, dated 9th July 1855.

Being brought before the Court, it is explained to him that there are strong grounds for suspecting that he will attempt to injure a man by name Wito wulud Mulhare, and that he, therefore, in conformity with Regulation XII. of 1827, Section XXV., has been ordered to find two approved sureties to the amount of Rs. 250 each (in default to undergo two years' imprisonment, each without labour), who will be responsible for his keeping the peace towards the said Wito wulud Mulhare for the space of five years.

He replies that he cannot find the required sureties.

Extract from the Proceedings in Case No. 12, *disposed of by the Assistant Magistrate on the* 30*th June* 1855.—Though there is not sufficient proof to convict the prisoner of the crime (murder), there is quite sufficient to render it highly probable that he did commit it; and as the same feeling (revenge) which prompted him to kill his wife would, in all likelihood, urge him to deal in a similar way with the participator in her offence, the Assistant Magistrate is of opinion that measures should be adopted

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Failure to furnish Security for Good Conduct.

to prevent his making any attempt to effect such a purpose. The prisoner is, therefore, directed to find two approved sureties to the amount of Rs. 250 each, who will be responsible for his keeping the peace towards Wito for five years, or, if unable to find such sureties, he is to remain in Jail until such time within the five years as he may be able to procure them. (Regulation XII. of 1827, Sections XXV. and XXVII. Clause 1st.)

Answer of the prisoner, to the effect that he cannot find the necessary sureties.

Finding and Sentence.—There was strong reason to suspect that the prisoner murdered his wife, whom he appears to have accused of adultery; but there was not sufficient proof to convict him of the crime. He was therefore discharged by the Assistant Magistrate, for want of proof.

As there is also much reason to believe that he will attempt the life of Wito wulud Mulhare, with whom his wife is said to have had illicit intercourse, it is thought advisable that some more stringent measure should be adopted to prevent his doing so than simply allowing him to enter into his own recognisances would be; and as he is unable to find two approved persons willing to give security for his keeping the peace as regards the said Wito wulud Mulhare, he is, in conformity with Regulation XII. of 1827, Section XXVII. Clause 1st, sentenced to undergo five (5) years' imprisonment, without hard labour, in the Nassick Jail, or such portion of that term as he may be unable to find the necessary securities.

Should he remain in Jail longer than three months, the sentence to be forwarded to the Joint Magistrate for confirmation.

Letter from the Assistant Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—In conformity with Clause 1st, Section XXVII. Regulation XII. of 1827, I have the honour to request the sanction of the Judges of

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the Sudder Foujdaree Adawlut to the further detention, for one year, from the 10th instant, of Munajee wulud Ranojee, whose case, decided by me, and afterwards confirmed by the late Joint Magistrate of Nassick, is herewith forwarded.

I beg respectfully to state that this application should have been made earlier, but I only received charge of the office on the evening of Saturday the 5th instant.

The prisoner will be kept in Jail pending the reply to this letter.

Precept issued to the Joint Magistrate.—The Joint Magistrate is to be requested to certify proceedings in the case in which the prisoner was charged with murder.

Return of the Assistant Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Assistant Magistrate in charge has the honour to forward the proceedings called for in Precept No. 669, herewith returned duly executed.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The Assistant Magistrate of Nassick in charge, Dr. Pelly, applied to the Court for the further confinement of a prisoner, Munajee, in default of his giving security for his peaceable conduct towards one Wito, said to be the paramour of his wife, whom he was suspected of having murdered.

We have now the proceedings before us of the inquiry into the charge of murder against Munajee, and I find that a confession of the crime to the Police Amuldar was sent up, which the prisoner admitted to be true before the Assistant Magistrate, and that he also repeated his admission of guilt, although (the Assistant Magistrate states) in a confused manner, contradicting himself as he went on, and finally refusing to answer. Notwithstanding, however, an admission of guilt several times repeated in his presence, as the Assistant Magistrate records, he found that there was not sufficient proof to

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justify his pronouncing a verdict of guilty against the prisoner, and he was discharged and called upon to give security not to murder another person. It is surprising that the Assistant Magistrate should have imagined it to be part of his duty to try a person charged with murder. All he had to ascertain was whether there was reason to suppose the prisoner had committed the offence, and then to commit him for trial, and, with an admission of guilt in his presence, I know not how he could have had any doubt as to the course to be pursued.

The Joint Magistrate confirmed the proceedings, and, as the Sub-Collectorate has been abolished, the case must now, I think, be sent to the Magistrate of Nuggur, who should be called upon to review and dispose of it.

Precept issued to the Magistrate of Ahmednuggur.— Before passing an order, sanctioning the further confinement of this prisoner, the Court resolve, as it appears that prisoner confessed to a charge of murder on investigation before the Assistant Magistrate, who discharged him for want of proof, to forward the proceedings to the Magistrate of Ahmednuggur, in order that he may review them, and pass such order as the case may seem to him to require, reporting the same to the Court.

Return by the Magistrate of Ahmednuggur to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate has the honour to report that he has reviewed the case in question, and will immediately, on the arrival of the prisoner and witnesses from Nassick, commit the former to the Court of Sessions on a trial of murder.

The following remarks by the Assistant Magistrate will explain the cause of his not having done so earlier :—

" He deems it more probable that the ends of justice will be attained by discharging the prisoner for want of sufficient proof, and requesting the Police Autho-

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rities to make renewed endeavours to obtain further evidence."

Resolution of the Sudder Foujdaree Adawlut.—To be recorded.

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TANNA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Notice issued by the Magistrate of Tanna, E. C. JONES, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 29th August 1856.]

Notice by a Magistrate.

Notice, under Section XIX. Regulation XII. of 1827,—is hereby given, that, whereas it has been found necessary to preserve for drinking purposes the water of the river at Vindhney, Turuf Acorwalit, Talooka Panwell, in the Tanna Zillah, divided by a masonry dam, all persons are hereby prohibited from bathing and from washing animals, clothes, or any articles in it, and from dirtying it in any way. Disobedience of this Injunction will be punished according to law.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—With reference to the provisions of Clause 6th, Section XIX. Regulation XII. of 1827, I have the honour to forward to the Court of Sudder Foujdaree Adawlut, a copy and translation of the Injunction issued by me to-day.

Resolution of the Sudder Foujdaree Adawlut.—To be recorded.

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TANNA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Notice issued by the Magistrate of Tanna, E. C. JONES, and referred to the Sudder Foujdaree Adawlut, on the 1st September 1856.]

Notice by the Magistrate.

Notice, under Regulation XII. of 1827, *Section XIX.* —In April 1856, the Magistrate of Tanna, on his annual tour, visited the Dhurumsala at Datewra, Talooka

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TANNA.

Notice by the Magistrate.

Mahim, in the Tanna Collectorate, and observed that it had been in various ways dirtied by travellers who halt there; in order to prevent a recurrence of this, a Notice, under the provisions of Section XIX. Regulation XII. of 1827, is hereby given, that, from this day forward, all persons who have recourse to the Dhurumsala shall observe the following rules:—

Travellers are prohibited during the fair seasons from making hearths or fire-places for cooking inside the Dhurumsala at Datewra, but those who have to cook must do so outside the roof, and must clean out the place used for such purposes before leaving the Dhurumsala.

Horses, bullocks, or other animals must be tied up outside the building; and these places must be swept and kept clean from time to time.

Travellers are prohibited from heaping filth, &c. in the Dhurumsala compound.

The Dhurumsala is built exclusively for travellers, and not for continuous occupation; Fakeers and Gosavees will, therefore, not be allowed to use it for more than five days at the most.

Travellers must not obey calls of nature within a distance of four hundred yards from the Dhurumsala.

No shops of intoxicating liquor or drugs shall be admitted under the roof of the building.

The above rules will be strictly enforced, and persons found infringing them in any way will be punished according to the Regulation above quoted.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—In conformity with the provisions of Clause 6th, Section XIX. Regulation XII., I have the honour to forward to the Court of Sudder Foujdaree Adawlut a copy and translation of an Injunction issued by me this day, laying down certain rules to be observed by travellers halting in the Dhurumsala at Datewra, Talooka Mahim, in this Collectorate

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TANNA.

Notice by the Magistrate.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate is to be informed that the Court have no objection to the rules he proposes, with the exception of the 2nd paragraph, which is not distinct as to who is to sweep and keep the places clean.

The Court observe that the translation forwarded is not correct in the 1st paragraph; "outside the roof" is put "for outside the Dhurumsala," and in the 5th paragraph "four hundred yards" is put for "four hundred paces." The Court also object to the use of the English words "Notice and Rules" in a Murathee order.

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POONA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 36 of the Calendar of the Poona Sessions Court for 1856. Committed by the Third Assistant Magistrate, A. J. DE H. LARPENT, on the 5th May 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 14th, 15th, 26th, 27th, and 28th May 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner, Sunkrojee bin Hurjee.]

Culpable Homicide.

Prisoners.—No. 1, Sunkrojee bin Hurjee, Sindey Koonbee, aged 40.

2, Luxumun bin Witojee, Sindey Koonbee, aged 25.

3, Anajee bin Hurjee, Sindey Koonbee, aged 35.

4, Gopaljee bin Ramjee, Sindey Koonbee, aged 50.

Charge.—Murder (under Regulation XIV. of 1827, Section XXVI. Clause 1st); in that, on or about Wednesday, the 26th day of March 1856, (corresponding with Boodwar, Falgoon Wud 5th, Shuké 1777,) within the limits of Wurgaum Shindee, in the Havaile Talooka of the Zillah of Poona, you purposely, and without justifiable or extenuating cause, deprived of life one

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POONA.

Culpable Homicide.

C. M. Harrison, Session Judge.

Krushnajee bin Andojee, aged about fifty, by striking him on the body with a stick, and on the head with a stone, and thereby inflicting injuries of which he, the said Krushnajee, then and there died.

Finding and Sentence by the Sessions Court.—The prisoners are charged with murder, and plead not guilty.

A quarrel between the Kakrays and Sindeys, sharers in the Patel Wuttun of the village of Wurgaum, regarding the right of their representatives to perform the 'rad pooja,'* resulted in an affray which terminated in the deceased's death.

The Report of the Inquest held on the body of the deceased shows that he died from fracture of the skull, caused by blows from a stone or stones, and the evidence of witnesses for the prosecution, Urjoonjee, Abajee, Gunesh, Nursojee, and Parwutee (Nos. 2, 8, 9, 10, and 11), proves that the blow was struck and the injury caused by the prisoner No. 1 (Sunkro), who inflicted it by striking him on the crown of the head with a stone as large as he could grasp held in his hand.

The witnesses named state that he only struck him one blow, which felled him to the ground, and that he immediately expired, whereas the Inquest Report shows there were two fractures; but this apparent discrepancy may be accounted for by supposing the stone to have had an uneven surface, and two of its points to have struck the deceased and caused two wounds.

The same witnesses all depose to prisoner No. 2 (Luxumun) having at the same time struck the deceased twice with a stick on the back, accounting for the marks described as having been found thereon in the Inquest Report; and of them four depose to prisoners No. 3 (Anajee) and No. 4 (Gopaljee) having had hold of the

* A large hole which is dug, and in which mud is made by pouring water for the people to dance in during the Holee festival.

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POONA.

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deceased, whilst prisoners No. 1 (Sunkro) and No. 2 (Luxumun) were assaulting him.

There is a discrepancy in the statements of the witnesses Nos. 10 and 11 (Nursojee and Parwutee) regarding prisoners No. 3 (Anajee) and No. 4 (Gopaljee), the former stating that Anajee had hold of his left and Gopaljee of his right hand, whilst the latter states Anajee had hold of the right and Gopaljee of the left. This was elicited in cross-examination by the prisoner's Vukeel; but it is not, the Session Judge considers, material in itself, for, in the recollection of such an affray, the mistake is one which might very easily be made, and it does not affect the testimony of the other witnesses, who were not questioned on the subject.

The defence of prisoner No. 1 (Sunkro) is that he ran off to Golegaum before Krushnajee was killed, but why he went there instead of to his own house at Wurgaum he does not explain; and of the four witnesses he calls to prove the *alibi*, one states that he did not leave until a quarter of a 'ghutka' after the affray had commenced; another says, first, that he went and stood under some trees, and again that he ran off to Golegaum after the affray had commenced; a third says, first, that he went and stood under some limb trees, and, afterwards, that he ran off from the rad to Golegaum, when the affray became violent; and a fourth that he left for Golegaum half a ghutka after the affray commenced.

Prisoner No. 2 (Luxumun) describes Krushnajee's death to have taken place as follows:—Whilst engaged in the affray himself, and, from his own description, very much worsted, he says he saw a struggle going on between the deceased and Anajee (prisoner No. 3), that the latter fell with the former a-top of him, and that Nana Rughojee, striking at Anajee with a stick, hit the deceased on his back instead, whilst Govinda, who had aimed a blow at Anajee with a metal vessel in his hand,

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missed his mark, and, striking Krushnajee on the head, killed him on the spot.

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Prisoners No. 3 (Anajee) and No. 4 (Gopaljee) tell the same incredible story, and they all three admit having run off to Golegaum after Krushnajee's death, where they remained until they were brought back by the Police.

The Session Judge sees no reason whatever to doubt the evidence for the prosecution, which has been in no way shaken by cross-examination of the deponents, or by that brought forward for the defence, and holds it to be clearly proved that prisoner No. 1 (Sunkro) struck the blow which caused deceased's death, that prisoner No. 2 (Luxumun) assaulted him at the same time with a stick, and that prisoners No. 3 (Anajee) and No. 4 (Gopaljee) held him whilst he was being thus assaulted.

The witnesses Urjoonjee and Abajee both state that prisoner No. 1 (Sunkro), just before the assault, referred to the probability of a murder being committed; but this is not confirmed by the others, who were also present at the time, and who must have heard him had he said so, and otherwise the Court, judging of the act, intention, and cause, considers the case divested of so much criminality as would constitute murder.

The prisoners are, therefore, convicted of culpable homicide; in having, on or about noon, on the 26th March 1856, (corresponding with Falgoon Wud 5th, Shuké 1777,) in the limits of the village of Wurgaum Sindey, Talooka Havaile, Zillah Poona, whilst engaged in an unlawful act, occasioned the death of one Krushnajee bin Andojee, by striking him on the head with a stone, and otherwise beating him with a stick about the body, thereby inflicting injuries of which the said Krushnajee bin Andojee died on the spot.

And after maturely considering the degree of guilt attaching to each prisoner, the offence committed, and

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the punishment provided for the same by Section XXVII. Regulation XIV. of 1827, the following sentence is passed :—

That you, Sunkro bin Hurjee Sindey, be imprisoned for five (5) years, of which eleven (11) months of each year are to be with hard labour, and one (1) month solitary, and that you pay a fine of five hundred (500) rupees, or be further imprisoned, with hard labour, for one (1) year. The fine, if paid, to be made over to the family of the deceased.

That you, Luxumun bin Witojee Sindey, be imprisoned for one (1) year, of which eleven (11) months are to be with hard labour, and one (1) month solitary.

And that you, Anajee bin Hurjee Sindey, and you Gopaljee bin Ramjee Sindey, be each of you imprisoned, with hard labour, for six (6) months.

* * * * * * * *

The prisoner Anajee says that on the day following that on which the 'holee' concluded, he presented a petition to the Police Amuldar of Havaile, stating that a disturbance having taken place on the holee day, one was to be expected on the rad day also, and praying therefore that Sepoys might be sent, and measures adopted to preserve the peace, and that he was told that he might go, and an order would be sent.

If this be true, and if no measures were taken to keep the peace, the death of the unfortunate deceased is attributable to apathy and neglect of duty on the part of the Police, and as, under such circumstances, the matter requires the strictest inquiry and most severe notice, an extract from the Court's proceedings of this date is forwarded for the Magistrate's information.

It is further brought to the Magistrate's notice that the Police Patel of Wurgaum appears to have been one of the principal actors in the affray, and to have taken no measures to preserve the peace of his village.

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Culpable Homicide.

In the English and Murathee depositions of the witness Abajee bin Sukaram Jadow, made before the Third Assistant Magistrate, there is a material discrepancy; in the former, prisoner No. 1 (Sunkro) is said to have held the stone in his hand when he struck the deceased, and in the latter to have thrown it.

The Assistant Magistrate should also always record, at the close of an English committal, that the prisoners had been asked whether they have any witnesses to call in their defence at the trial.

R. Keays, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Keays.—I entirely concur with the Session Judge in the view he has taken of this case. There does not seem to be any reason to doubt the evidence of the witnesses No. 6 (Ranojee), No. 8 (Abajee), No. 9 (Gunesh), No. 10 (Nursojee), and No. 11 (Parwutee), and I consider by their evidence the charge has been clearly established, and that there is nothing in the defence of the prisoners, or the evidence cited by them, which is calculated in any way to throw discredit on the evidence for the prosecution. I also concur with Mr. Harrison in his remarks regarding the Police, through whose negligence this unfortunate man has lost his life.

I would confirm the conviction, and reduce the punishment in the case of prisoner No. 1 to four years.

Resolution of the Sudder Foujdaree Adawlut.—The imprisonment of the prisoner Sunkrojee is reduced to four years, to be carried out as awarded by the Session Judge.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

SHOLAPORE.

[Case No. 34 of the Calendar of the Sholapore Sessions Court for 1856. Committed by the First Assistant Magistrate, J. F. ARMSTRONG, on the 26th May 1856. Tried by the Session Judge, T. A. COMPTON, on the 6th June 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner, Bhimee kom Hunmapa.]

Aiding in Abortion.

Prisoners.—No. 1, Bhimee kom Hunmapa, Kaikharee, aged 35.

2, Balapa wulnd Busapa, Dhungur, aged 30.

Charge.—Aiding in abortion (under Regulation XIV. of 1827, Section XXVIII., and Section I. Clause 5th); the prisoner No. 1, in having, on Friday, the 9th May 1856, (corresponding with Wuishak Shood 5th, Shuké 1778, Shookarwar,) in the village of Minujghe, Talooka Moodebehal, in the Zillah of Sholapore, applied to the private parts of one Bhimee kom Dhondapa (deceased) a stick smeared with the milk of the 'rooichik' tree and thereby procured the abortion of a child of five months, with which the aforesaid Bhimee was pregnant; and the prisoner No. 2 (Balapa), in having taken the deceased Bhimee to the house of the prisoner No. 1 (Bhimee), for the purpose of procuring abortion, paid the prisoner No. 1 (Bhimee) a fee of one rupee for the same, and himself thrown away the fœtus after it was expelled.

Prisoners plead not guilty.

T. A. Compton, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners No. 1 (Bhimee kom Hunmapa) and No. 2 (Balapa wulud Busapa) are charged with aiding in abortion, and plead, the prisoner No. 1 not guilty, and the prisoner No. 2 guilty.

The prisoner No. 1 (Bhimee) fully confessed before the District Police Officer of Toombgee, and before the

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First Assistant Magistrate, that Venkowa (witness No. 5), the mother of the deceased Bhimee kom Dhondapa, came to her house and told her that her daughter had not menstruated for five months, and appeared to be pregnant, and that she (Venkowa) had administered mustard-seed and other things to her in the hope of causing abortion, but without effect; and that she then asked her (the prisoner No. 1, Bhimee) to administer some drug to Bhimee to bring on abortion.

The prisoner No. 1 adds, that on Friday night (the 9th May 1856) the prisoner No. 2 (Balapa) brought the deceased Bhimee to her, and asked her to take measures for causing abortion, saying that he had been sent to her by Bhimee's mother (Venkowa) for the purpose; that she (prisoner No. 1, Bhimee) then told Bala that she was in the habit of demanding in such cases four annas for every month her patients were advanced in pregnancy, and that as Bhimee was five months gone with child, he must give her Rs. 1-4-0 for her trouble; that, Bala having agreed to this, she took a reed, wrapped some cotton round it, and soaked it in the milk or juice of the rooichik tree, and then told Bala to go out as she was going to apply the drug. The confession goes on to state that she inserted the reed in Bhimee's *pudendum*, and left it there for some time, and that when Bala returned from his dinner, at 3 P. M., Bhimee was complaining of severe pain, and kept rolling on the floor, and on the following morning, about an hour before daybreak, abortion took place, and the fœtus fell from her completely formed. Bala then wrapped it up and placed it in a basket of salt; and, as the after-birth had not come away, she (prisoner No. 1, Bhimee) told him to administer a decoction of 'toour' and 'kooltee,' and afterwards to tie a string tightly round Bhimee's thighs. She adds that the prisoner No. 2 (Balapa) afterwards came back and told her that Bhimee was lying in a nulla, whereupon she (prisoner

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No. 1, Bhimee) went to her, introduced her hand into the *vagina*, and brought away some of the after-birth.

The prisoner No. 1 (Bhimee) now repudiates this confession, though she fully confirmed it before the First Assistant Magistrate ; the witnesses Nos. 6 and 7, however, prove that it was freely and voluntarily made, and the Court thinks there can be little doubt that her retraction of the confession is solely attributable to Jail influence.

It appears, from the statement of prisoner No. 2 (Balapa), that the unfortunate Bhimee died on the Monday, at about 3 o'clock P. M., and there can be little doubt that her death was caused by the drugs and treatment to which she had been subjected, or by the after-effects of the abortion ; but as it cannot be satisfactorily proved what deprived her of life, the Session Judge concurs with the Assistant Magistrate in considering that the prisoners ought not to be charged with murder or culpable homicide.

The verdict of the Court of Inquest (No. 4) which sat upon the body, is to the effect that the body was swollen and marked with boils or eruptions, from which blood had been flowing, and that the *pudendum* was swollen and bloody ; there were no marks of violence on the body, and the members of the 'punchayet' were of opinion that the death of the deceased was caused either by the after-birth not having come away, or by the drugs which had been administered to her.

Though the prisoner No. 1 (Bhimee) now repudiates her confession, the Court considers it has received ample corroboration from the evidence of the mother of the deceased, viz. Venkowa (witness No. 5), whose account of the matter tallies entirely with that of the confession, and who admits that, as she had administered drugs to her daughter to remove her pregnancy without effect,

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she applied to the prisoner No. 1 (Bhimee) to bring about the desired end, and arranged everything with her.

The prisoner No. 1 (Bhimee) now denies before the Sessions Court having administered any drug or compound internally or externally to the deceased Bhimee, and alleges that whatever was given to her was given by her mother Venkowa. She admits, however, that the deceased Bhimee did apply to her for drugs to procure abortion, and that the prisoner No. 2 (Balapa) was with her at the time; and she also admits that one rupee was found in her house, and asserts that it must have been thrown there by the deceased.

She has been a widow for the last five years or so, and affirms that she gains her livelihood by basket making; but from the remark in her confession that she was in the habit of receiving four annas for every month which her patients had advanced in pregnancy, it seems not improbable that she lives by causing abortions, and practising the detestable trade of destroying infant life.

In all probability Bhimee's death was caused by the treatment of the prisoner No. 1 (Bhimee), but it must be remembered that it may have been partly brought on, or accelerated, by the drugs she received from her own mother.

The prisoner No. 2 (Balapa) fully confesses that he carried on an illicit intercourse with the deceased Bhimee, and that he was the father of the child with which she was pregnant, and that, at her mother's recommendation, he took her to the prisoner No. 1 (Bhimee) for the purpose of obtaining drugs and removing her pregnancy. He admits that he saw the fœtus lying dead on the floor, and that the prisoner No. 1 and he threw it into a nulla. The Court, therefore, considers him unquestionably guilty of aiding in the removal of Bhimee's pregnancy.

The Session Judge is of opinion that the prisoner No. 1 (Bhimee) is not fairly chargeable with murder or

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Aiding in Abortion.

culpable homicide, though her treatment of the deceased had a fatal result, because the unlawful act she performed was not undertaken with the intention (or even supposition) of destroying the mother's life, but solely with the object of removing pregnancy; but the case, nevertheless, appears to the Court to call for a severe punishment.

The prisoners Nos. 1 and 2 (Bhimee and Balapa) are convicted on their own confession, and the evidence against them, of aiding in the procurement of abortion; the prisoner No. 1 (Bhimee) in having, on Friday, the 9th May 1856, (corresponding with Wuishak Shood 5th, Shuké 1778, Shookarwar,) in the village of Minujghe, Talooka Moodebehal, in the Zillah of Sholapore, inserted into the private parts of one Bhimee kom Dhondapa (deceased) a stick and some cotton soaked in the milk of the rooichik tree, with the intent of procuring the abortion of a child with which the aforesaid Bhimee had been five months pregnant, and which was expelled on the following morning; and the prisoner No. 2 (Balapa) in having taken the deceased Bhimee to the house of the prisoner No. 1 (Bhimee), and requested her to administer drugs to Bhimee for the purpose of procuring abortion, and having thrown away the fœtus after it was expelled.

After a mature consideration of the offence which the prisoners have committed, together with the nature of the punishment provided for the same by Section XXVIII., and Clause 5th, Section I. of Regulation XIV. of 1827, the Court proceeds to pass the following sentence:—

That you, prisoner No. 1 (Bhimee kom Hunmapa), be imprisoned, and kept to hard labour for five (5) years.

That you, prisoner No. 2 (Balapa wulud Busapa), be imprisoned, and kept to hard labour for one (1) year.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—If the prisoners in this case have been guilty of any offence, they have been guilty of murder.

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Sholapore.

Aiding in Abortion.

They are accused of having assisted in procuring abortion, which is an unlawful act, and which was accompanied by the death of Bhimee, wife of Dhondapa; and there can therefore be no doubt, if the charge be proved, that they have committed murder, which is defined to be, "to commit or assist in any unlawful act, the perpetration of which is accompanied with the death of a human being," and it would then remain for them to show that it was attended by circumstances sufficiently extenuating to divest it of so much criminality as constitutes murder, and reduces it to culpable homicide.

I, however, do not think that there is sufficient evidence in this case for conviction. There is an Inquest Report which states that Bhimee is dead, and died in their opinion either of the after-birth not coming away, or of drugs taken to procure abortion. Venkowa, the mother of the deceased, appears only to have heard of her death, and deposes only to having spoken with prisoner Bhimee about her daughter, whom she said she would examine; but that Bhimee, deceased, ever went to the prisoner, or was ever seen by the prisoner, we have no evidence but Bhimee's retracted confession. The offence was committed on the 9th May, the Inquest was held on the 14th, Bhimee confessed on the 15th, the case was despatched on the 17th, but not received by the Assistant Magistrate until the 26th May. It is possible, as the Session Judge says, that "the retractation of the confession is solely attributable to Jail influence," but it is also possible that it might have arisen from other and more honest causes; and until all cause for doubt is removed, I shall be loath to convict a prisoner on a retracted confession alone, for, as I have shown above, Venkowa's statement cannot be quoted, as the Session Judge does, as corroborative of the confession.

I am very much afraid, from her petition to us, that Bhimee was implicated, and, had there been any evidence

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Aiding in Abortion.

at all against her, I should have been willing to adopt the Session Judge's appreciation of it; but as there is none, the conviction and sentence on both prisoners must be annulled.

The Session Judge has entered, at the commencement of the trial, a plea of not guilty for both prisoners; in his finding he says that Bhimee pleaded not guilty, and Balapa guilty. Such mistakes as these ought not to appear in a criminal trial, and the Session Judge must be requested to be more careful in future.

Resolution of the Sudder Foujdaree Adawlut.—The conviction is annulled, and prisoners to be discharged.

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COLABA.

Petition against a Decision of a Magistrate.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Petition of Bhasker Venaek to the Sudder Foujdaree Adawlut. Referred for Report to the Joint Magistrate of Colaba, L. REID, on the 13th August 1856.]

Petition of Bhasker Venaek to the Sudder Foujdaree Adawlut.—[Praying that a charge of perjury may be ordered to be prepared against certain parties, the petitioner's application to that effect having been rejected by the local Authorities.]

Precept issued to the Joint Magistrate of Colaba.—You are hereby requested to report upon the matter set forth in the accompanying petition presented to this Court by Bhasker Venaek, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Joint Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning this Precept

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COLABA.

Petition against a Decision of a Magistrate.

within the specified time, the Joint Magistrate has the honour to make the following report on the petition which accompanied it:—

On 2nd March last, one Sukaram Babjee complained to the Police Patel of Narunge, in the Oonderee Talooka of this Joint Magistracy, that the petitioner, along with his brother Shamrow Venaek, had stolen certain brass, copper, and other vessels belonging to him, valued at Rs. 59-14-6, and were absconding from the village. On this, they were apprehended, with these articles in their possession, at the village of Rewus, some few miles distant, whilst *en route* to Bombay, apparently with the intention of being present at a marriage.

The case was investigated by the Police Amuldar, and it appeared from the evidence that (as stated by the petitioner) the articles in question were placed in his keeping by the complainant's wife during his absence, owing to an attachment being about to be placed on the house of the complainant by one of his creditors.

The complainant subsequently declined prosecuting the petitioner and his brother, on the ground that his wife had admitted, and he was satisfied that the articles were placed by her as alleged, but, on demanding them back, the petitioner refused to give them up, till he was threatened with a prosecution. It is clear that the property was placed with him merely as a friend, and that he attempted to possess himself of it by a breach of faith.

The petition is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—Not present third time; struck off.

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Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

RUTNAGHERRY.

[Case No. 12 of the Calendar of the Rutnagherry Sessions Court for 1856. Committed by the First Assistant Magistrate, G. Scott, on the 25th February 1856. Tried by the Acting Session Judge, H. P. St.G. Tucker, on the 25th April 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Robbery by Night, without Force.

Prisoner.—Govind, *alias* Dabadee bin Soorda Dasooree, Koonbee, aged 29.

Charge.—Robbery by night, without force (Regulation XIV. Sections XXXVI. and XXXVII. Clause 4th, of 1827); in that he did, on the night of 18th February 1856, (Mitee Magh Shood 13th, Shuké 1777,) at the village of Dakoolee, Talooka Viziadroog, remove and carry off from the cow-shed of Babjee Tulokur, situate in the said village, one maund and seven and a half seers of hemp, value about Rs. 1-10-10, the property of one Ram bin Yesh Sett Karlee.

The prisoner pleads guilty.

H. P. St.G. Tucker, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner would seem to be an irreclaimable thief, who has no fear of the Jail. On such a man imprisonment for a short term will have no effect, and the only means of protecting society from his petty depredations is to incarcerate him for an extended period. Offenders of this class are the pests of society.

The prisoner Govind, *alias* Dabadee bin Soorda Dasooree, is sentenced to be imprisoned, and kept to hard labour, for a period of five (5) years from this date, and further to receive fifty (50) stripes with a cat-o'-nine-tails on his bare back, twenty-five (25) stripes at the expiration of one month from this date, and twenty-five (25) three months subsequently.

In the Sudder Foujdaree Adawlut ; Minute by Mr. W. H. Harrison.—In this case the prisoner has been

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1856 September 19. RUTNAGHERRY. Robbery by Night, without Force.

convicted, on his own plea, of stealing some hemp, of the value of Rs. 1-10-10, and sentenced (he being also shown to be an old thief), to five years' imprisonment with hard labour, and fifty stripes. This sentence seems to me very disproportionate. The crime committed is really theft, and the punishment should, I think, be limited to what the laws award for such offence. The sentence, then, should be mitigated to six months' imprisonment with hard labour, and twenty-five lashes.

There is reason to apprehend that our statistics of crime are swelled by erroneous entries of thefts as robberies and gang robberies; and we have too many really serious offences to deal with, to allow room for exaggerating the criminality of the lesser.

Resolution of the Sudder Foujdaree Adawlut.—The Court find that the prisoner was guilty of theft, and the sentence is therefore reduced to six (6) months' imprisonment, with hard labour, and twenty-five (25) lashes.

The Session Judge is to be informed that the remarks he has forwarded with this case cannot be received and recorded with the return, which is complete without them.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

1856 September 19. KONKUN.

[Case No. 71 of the Calendar of the Konkun Sessions Court for 1856. Committed by the First Assistant Magistrate, W. B. BOSWELL, on the 14th August 1856. Tried by the Acting Session Judge, H. P. St.G. TUCKER, on the 21st August 1856. Proceedings submitted to the Sudder Foujdaree Adawlut for confirmation.]

Prisoner.—Chahia wulud Rughia, Mhar, aged 30. Murder.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in that, on or about the 11th August 1856, (Mitee Shrawun Shood 10th, Shuké 1778,) at the village of Pisowle, Turuf Amburnath, Talooka Callian, Tanna Division of Zillah Konkun, he did, without

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KONKUN.

Murder.

H. P. St.G. Tucker, Acting Session Judge.

justifiable or extenuating cause, strike his wife, Rukhme, with a bamboo club, several blows on the head and breast, and did thereby deprive her of life.

Prisoner pleads not guilty.

Finding and Sentence by the Sessions Court.—It is most clearly established by the evidence recorded at this trial that the prisoner, on the morning of 11th August, came into the house, where he and his wife had passed the night, and, after a short conversation with her, did strike her three blows with the club, now in Court, two on the head and one on the stomach, and did thereby immediately deprive her of life. No one overheard the conversation which passed between the prisoner and his wife, but the prisoner himself states that he told his wife to prepare their usual morning meal, when she said there was nothing to prepare it from, and began to mock and abuse him, which made him strike her. No other cause or provocation can the prisoner assign for his brutal and cruel violence, and though he seems to have acted in a fit of ungovernable anger, yet the character of the weapon used, and the repetition of the blows, show a ferocity and malignity of purpose, which, in my opinion, invests his act with the criminality which attaches to murder. The provocation was of a nature so little likely to produce violent anger in a reasonable being, that, on reading over the papers of commitment, I entertained some doubts of the prisoner's sanity, and have therefore watched him narrowly throughout the trial. His manner has been at times strange, and his speeches incoherent and unintelligible, but, after closely observing, I am of opinion, that he is competent to distinguish between right and wrong, and that, though a being at the lowest step of the intellectual scale, he is one who must be considered responsible for his actions. None of the witnesses depose to having seen any symptoms of insanity in his conduct, except his uncle Abia (witness No. 6),

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who says that, during the month preceding the assault, he had noticed certain eccentricities in the prisoner's behaviour, namely, that he used on occasions to sit and abuse unknown persons.

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Murder.

After mature deliberation on the whole of the facts elicited at this trial, I convict the prisoner Chahia wulud Rughia, Mhar, of murder, as set forth in the charge on which he has been arraigned, and, as I see no extenuating circumstances in his case, I sentence him, subject to the confirmation of the Court of Sudder Foujdaree Adawlut, to be hanged by the neck till he be dead, at the usual place of execution at Tanna. (Regulation XIV. of 1827, Section XXVI. Clause 4th.)

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The Session Judge wastes a great deal of time by examining the witnesses to the Inquest Report at such length. Their evidence is merely formal, and should not be unnecessarily protracted.

I wish he would discontinue reading documents until he has proved them. The prisoner's confession was admitted, but not until after it had been read; and if it had not been admitted, and he failed to prove it, he would, by persisting, as he does, in a wrong procedure, have found himself again, as he did once before, wasting his time by reading a document he could not place on record, and, what is worse, probably having his mind warped by what he had read and could not use.

It is unnecessary for the Session Judge, except when passing sentence, to record in detail how it is to be carried out; in his letter handing up the case, it would be quite sufficient to say "sentenced to death," without entering into coarse detail.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—This is a clear case. The prisoner himself admits that he struck the blows which caused his wife's death, and, as he repeated these blows with a stick five inches in circumference at the thicker

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Murder.

and three at the thinner end, using the stick, as proved by the witnesses who saw the assault, with both hands, I concur with Mr. Tucker that he has been guilty of murder.

The plea of insanity was not set up by the prisoner, and the witnesses do not, with the exception of witness No. 6 (Abia), allude to it in any way. The Session Judge is of opinion that he is able to distinguish between right and wrong, and must be considered responsible for his actions. Under these circumstances, I would confirm the sentence.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence confirmed.

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POONA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 66 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, W. M. COGHLAN, on the 14th August 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 20th and 21st August 1856. Proceedings submitted to the Sudder Foujdaree Adawlut for confirmation.]

Attempt to commit Murder.

Prisoner.—Girjee kom Luxumun, Koonbee, aged 16.

Charge.—Attempt to commit murder (Regulation XIV. of 1827, Section XXVI. Section I. Clause 2nd); in that you did, on Monday, the 4th day of August 1856, (corresponding with Shrawun Shood 4th, Shuké 1778,) at about 8 o'clock in the evening, at Wurwunday, Talooka Bhimthuree, Zillah Poona, purposely, and without justifiable or extenuating cause, mix a quantity of poisonous substance, viz. red lead, in the food which you had prepared for your husband, Luxumun bin Jotee, thereby intending to take away his life.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with attempt to commit murder, and pleads guilty.

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POONA.

Attempt to commit Murder.

It appears from her confession, admitted before the Court, that as her husband would not allow her to remain with her mother, to whose house she had gone without his permission, she resolved to poison him, and having procured some red lead ('shendoor') from a female friend, Ahila, in exchange for a seer of grain, she mixed some of it up in 'jowareeha kunya' (particles of jowaree boiled) prepared for her husband's dinner. She states that she gave him his curry and bread in the same dish in which she had prepared the jowareeha kunya with the red lead, and that, as he was eating, he suddenly observed marks of the latter on the dish, which led him to examine the jowareeha kunya, and to discover that it was also red; that they were then taken to the Patel, who questioned her, and she confessed as above.

The prisoner is convicted on her own confession, confirmed after hearing the evidence in the case (which, if admitted to be true, is sufficient for conviction) read over to her, of attempt to commit murder; in having, on Monday, the 4th day of August 1856, (corresponding with Somwar, Shrawun Shood 4th, Shuké 1778,) at about 8 o'clock in the evening, purposely, and without justifiable or extenuating cause, mixed a quantity of red lead in the food which she had prepared for her husband, Luxumon bin Jotee, thereby intending to deprive him of life.

And after maturely considering the measure of guilt attempted and committed, and the punishment provided for the offence prescribed by Clause 4th, Section XXVI. Regulation XIV. of 1827, the following sentence is passed :—

That you, Girjee kom Luxumun, be transported beyond sea for the term of your natural life. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

* * * * * *

"Wilfully, feloniously, and with malice aforethought,"

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POONA.

Attempt to commit Murder.

W. E. Frere, Puisne Judge.

are terms not recognized by Section XXVI. of Regulation XIV. of 1827, under which, in connection with Section I. Clause 2nd, this prisoner has been committed for trial.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—Here is a girl of sixteen convicted on her own confession and pleading guilty to a charge of attempting to poison her husband, and sentenced to transportation. As was to be expected, she now, in her petition to the Court, says she is only twelve, but I do not think, as the Session Judge says she is sixteen, that there is any occasion to make further inquiry as to her age, and the conviction and sentence must, I think, be confirmed.

It should be pointed out to the Assistant Magistrate that, except the prisoner's confession and plea of guilty, there is no proof against her whatever, and that, had she pleaded not guilty, and denied her confession, she must have been acquitted. It does not appear what became of the poisoned food, and that, instead of asking the Civil Surgeon what the effect of taking red lead would be, as it is well known to be poisonous, he had better have obtained some of the food in which it was mixed, and have submitted that to the Civil Surgeon's tests, so that, if the prisoner did retract her confession there might have been evidence against her.

It does not appear that the District Police Officer took any pains to obtain or preserve the food, and the Assistant Magistrate should have noticed his neglect to him.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

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POONA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 62 of the Calendar of the Poona Sessions Court for 1856. Committed by the Third Assistant Magistrate. A. J. DE H. LARPENT, on the 5th August 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 14th, 15th, and 16th August 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, for confirmation.]

Murder, and Instigating Murder.

Prisoners.—No. 1, Toolzao kom Gungajee Bhagwut, Telee, aged 60.
2, Thukee kom Sewudia, Telee, aged 25.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, on Monday, the 28th July 1856, (corresponding with Somwar, Ashad Wud 12th, Shuké 1778,) at the village of Wultee, in the Pabul Talooka of the Poona Zillah, purposely, and without justifiable cause, deprived of life a male infant, of which you, Thukee, (prisoner No. 2) had been delivered, by throttling or burying it alive.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners in this case are charged with murder, and plead not guilty.

It appears that prisoner No. 2 (Thukee kom Sewudia), who was residing with her mother prisoner No. 1 (Toolzao kom Gungajee), having had illicit intercourse with a Ramosee, was, on the night of the 28th of July last, delivered of a nine months' child, of which he was the father, and that, having requested that it might be killed, her mother, Toolzao (prisoner No. 1), attempted to strangle it, and, failing in this, buried it alive in a hole which she had prepared for the purpose in the house.

There were two women, Chimee and Saee (witnesses Nos. 6 and 7), sleeping in the house at the time, and they both depose to having been awoke up when prisoner No. 2 (Thukee) was delivered, and to having gone

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to her and heard her say, "The child is Dhoora (Jhoora or Jhooria) Ramosee's, so kill it"; and the latter (Saee), before the Police, deposed that after her mother had failed in killing the child by strangulation, she, Thukee (prisoner No. 2), endeavoured to kill it by pressing its throat. Until, however, reminded of this, she did not mention the circumstance to the Court, and the Acting Session Judge thinks, therefore, much reliance cannot be placed on this unsupported statement.

She makes no defence, and is therefore convicted of instigating murder; in having, on Monday, the 28th July 1856, (corresponding with Somwar, Ashad Wud 12th, Shuké 1778,) at the village of Wultee, in the Pabul Talooka of the Poona Zillah, instigated her mother, Toolzao (prisoner No. 1), to kill a male infant of which she had just been delivered.

Although the members of the Inquest Report state that they found no marks of injuries upon the person of the infant when it was exhumed, there can be no doubt, from the evidence of the witnesses Nos. 4 and 9 (Khundo and Tookaram), the latter of whom is the Police Patel, that there were marks of strangulation on the throat. The former of these was also without, and the latter present within the house, when the body was exhumed from the place where the idol was kept, Toolzao (prisoner No. 1) herself coming forward and digging it out when the spot had attracted attention. She further confessed before the Police Amuldar and Third Assistant Magistrate to having killed the child; and although she now repudiates this confession, it is proved to have been freely and voluntarily made, and is most strongly corroborated by the abovementioned facts, and by the evidence of the witnesses before named, Chimee and Saee (Nos. 6 and 7), who depose to her having, when told by Thukee (prisoner No. 2) to kill the child, first attempted to strangle it, and then buried it in a hole dug for the

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purpose whilst it was alive. Chimee states that she asked her to give her the child, and promised to take care of it, and Saee confirms this; the former was not present when the child was buried, but she states she heard the child hiccoughing from the verandah where she was standing, and Saee, who was present, says the same.

This prisoner also makes no defence, and as, under the above circumstances, no doubt of her guilt can be entertained, she is convicted of murder; in having, on Monday, the 28th July 1856, (corresponding with Somwar, Ashad Wud 12th, Shuké 1778,) at the village of Wultee, in the Pabul Talooka of the Poona Zillah, purposely, and without justifiable cause, deprived of life a male infant, of which Thukee (prisoner No. 2) had been delivered, by throttling or burying it alive.

And, after considering the nature of the offences committed, and the punishment prescribed for the same by Regulation XIV. of 1827, Section XXVI. Clause 4th, and Section I. Clause 5th, the following sentence is passed:—

That you, Toolzao kom Bhagwut, and you Thukee kom Sewudia Kusub Telee, be both of you transported beyond sea for the term of your natural lives. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

* * * * * * *

One of the attesting witnesses to the prisoners' statements cannot write; the attention of the Magistrate is called to this,—persons who *can* write should always be selected for this duty.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The conviction and sentences may be confirmed, for I see no reason to doubt the truth of Chimee and Saee's depositions. The prisoners, in their petition, say they are women of bad character, and if so, they are not unlikely, as the prisoners suggest, to be in the house at the time. The child being buried in the house is of itself a very

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Murder, and Instigating Murder.

suspicious circumstance, and all that the prisoners now urge for the first time in their petitions is most improbable.

Tookaram Patel (witness No. 5) says that Khundo came and told him that the child had been murdered. The Session Judge should not have recorded this, as it is not evidence. But Khundo (witness No. 4) says nothing about the murder in his evidence; he merely says that, coupling what he had heard with what he saw, he made a report to the Patel; what he saw was little enough— "Toolzao going with Thukee's clothes to her house."

The Session Judge asks Saee (witness No. 7) how she came not to mention in her evidence before the Court what she said before the Police, that after Toolzao failed in killing the child, Thukee endeavoured to kill it. He ought not to have put the question in that form at first; he should have asked her first whether Thukee took any part in the murder, and if that question produced the same information as she gave before the Police, it would have been well and good. If she said no, that Thukee took no part in it, he might then have put the question as he did; he should not have led her at once to the answer.

In proving the confessions, the Session Judge does not ascertain that the confessions, as written down, are what the prisoners dictated, but that the prisoners admitted what they had read over to them to be the truth. It does not signify in this case, for there is evidence sufficient for conviction without the confessions; but such omissions should be avoided in future, as there may be a great deal of difference between what a Karkoon writes down and a prisoner admits to be true, and the prisoner's own account of what took place.

Resolution of the Sudder Foujdaree Adawlut.—Conviction and sentence confirmed.

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POONA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 60 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, C. R. OVANS, on the 27th July 1856. Tried by the Acting Session Judge, on the 13th and 25th August 1856. Proceedings submitted to the Sudder Foujdaree Adawlut for confirmation.]

Perjury.

Prisoner.—Balcrishna Mahadeo Prudhan, Kayast Prubho, aged 32.

Charge.—Perjury (Regulation XIV. of 1827, Section XVI.); in that, on Saturday, the 11th April 1856, (corresponding with Sunwar, Chuitru Shood 8th, Shuké 1778,) in the Poona Zillah Court, before the Acting Judge, you did, in order to injure the character of Azum Abajee Baboorow, the Moonsiff of Wurgaum, wilfully make a false statement, on solemn affirmation, declaring the contents of a petition to be true, in which you accused the said Moonsiff of having, on the 11th November 1854, with a view to benefit one of the parties, changed and torn up a decision in a civil suit No. 331 of 1853, written by him under the provisions of Act XII. of 1843.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with perjury, and pleads not guilty.

On the 12th April last, he presented a petition to the Acting Judge, accusing the Moonsiff of Wurgaum, among other things, of having, after writing his decision in a civil suit under the provisions of Act XII. of 1843, destroyed the same, and written another, and in support of this accusation he produced a paper purporting to be a portion of the destroyed minute. He was accordingly solemnly affirmed to the truth of the contents of his petition, and an inquiry instituted, from which it appears that the accusation is altogether false and groundless, and has been made in a spirit of revenge by the prisoner, he having been removed from the Moonsiff's Court in

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Perjury.

which he was Sheristedar, for misconduct, and subsequently dismissed the Service in consequence of a report made by the latter. The paper produced in support of the charge is, the Moonsiff explains, the preliminary statement of the circumstances of the case, which it is usual for the trying Authority to write with his own hand prior to recording his decision, and is brought down to the points for decision, but no farther. He states that he cancelled it because he had first stated that the papers and proceedings in the case had been read, and then that it had again been brought on the file, whereas the last circumstance should have been mentioned first, and because he considered it too diffuse. The prisoner would have it believed that it originally consisted of two bunds, and that the lower one, containing the Moonsiff's decision, was removed by him, and destroyed. Of this, however, there is no evidence. Of three witnesses he called to prove the fact, two assert they know nothing at all about it (the other could not be found). The prisoner has named forty witnesses and documents he wished to call and have recorded in his defence, but of these, with the exception of the three witnesses summoned, and Mr. Inverarity and Gopalrow Huree Deshmook, and the petition of Moro Sudasew, the whole consist of proof he wished called to establish the other charges preferred by him against the Moonsiff in his petition to the Acting Judge (see the 'yad' in which they are named and specified, No. 7). Neither the evidence of Mr. Inverarity, Gopalrow Huree, or the petition of Moro Sudasew could be of any avail in defending him from the charge of perjury, for he wishes the former called to prove he made a report stating he did not consider the charge established; Gopalrow, to prove that the paper he has produced in support of his accusation against the Moonsiff, is not a 'huseelbund'; and the petition of Moro Sudasew to prove that the Moonsiff has suppressed his case to prevent him

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from complaining against him. Under these circumstances, the Court considered it unnecessary to call evidence, the only object in naming which could be to delay the case; and entertaining no doubt whatever of the prisoner's guilt, he is convicted of perjury; in having, on Saturday, the 11th April 1856, (corresponding with Sunwar, Chuitru Shood 8th, Shuké 1778,) in the Poona Zillah Court, before the Acting Judge, in order to injure the character of Azum Abajee Baboorow, the Moonsiff of Wurgaum, wilfully made a false statement, on solemn affirmation, declaring the contents of a petition to be true, in which he accused the said Moonsiff of having, on the 11th November 1854, with a view to benefit one of the parties, changed and torn up a decision in a civil suit No. 331 of 1853, written by him under the provisions of Act. XII. of 1843.

After maturely considering the nature of the offence committed, and the punishment provided for the same by Regulation XIV. of 1827, Section XVI. Clause 2nd, the following sentence is passed:—

That you, Balcrishna Mahadeo Prudhan, Kayast Prubho, be imprisoned, with hard labour, for one (1) year. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is accused of perjury, in having falsely asserted that the Moonsiff of Wurgaum, with a view to benefit one of the parties, changed and tore up a decision in a civil suit. It is admitted by the Moonsiff that he did change some part of his Minute, and the only question is why he did so. He says he did it because it was too diffuse. The prisoner says he did it in order to benefit one of the parties. The Court are of opinion that the Moonsiff ought to have been sufficiently prepared, when he wrote his Minute, which was his decision in the case, not to have found it necessary that he should tear it up. Some

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corrections might of course have been required, and these should have sufficed without the necessity for tearing up the whole paper, which must look suspicious; and the Court will therefore give the prisoner the benefit of the doubts they have in the case, and acquit him.

The Judge and the Assistant Magistrate are to be requested to adhere to the old and well-received mode of spelling well-known names, and not spell Wurgaum as the former does "Wudgaum," and the latter "Wadagaum," and Moonsiff "Mounsiph." Latitude is allowable in new names; but when once the spelling of names has been established in Regulations, as Moonsiff or as Wurgaum is in Grant Duff's History of the Murathas, a standard work with which every Civilian must be acquainted, it is desirable to adhere to that spelling.

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TANNA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 50 of the Calendar of the Konkun Sessions Court for 1856. Committed by the Acting Deputy Magistrate, DADOBHA PANDOORUNG, on the 6th June 1856. Tried by the Acting Session Judge, H. P. ST.G. TUCKER, on the 21st, 22nd, 23rd, 24th, and 26th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut by the Acting Session Judge.]

Attempt to Commit Murder; and Aiding and Abetting in the Offence.

Prisoners.—No. 1, Theodosius de Crasto, son of Pascoal de Crasto, Native Christian, aged 40.

2, Luis de Crasto, son of Manoel de Crasto, Native Christian, aged 28.

3, Patricio de Mello, son of Nicolao de Mello, Native Christian, aged 40.

Charge.—Attempt to commit murder (Regulation XIV. Section XXVI. Clause 1st, and Section I. Clause

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2nd, of 1827); in that they, on or about 15th May 1856, (corresponding with Wuishak Shood 11th, Shuké 1778,) in the village of Andheree, Talooka Salsette, Tanna Division of Zillah Konkun, did, without justifiable or extenuating cause, fire guns, loaded with powder and bullets, at Pascoal Baretto, son of Pedro Baretto, who was bathing in front of his own dwelling-house, with intent to kill the said Pascoal Baretto.

The prisoners plead not guilty.

H. P. St.G. Tucker, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners in this case (three Native Christians) are charged with an attempt to murder one Pascoal, son of Pedro Baretto, by firing guns at him, loaded with powder and ball, with intent to kill him. It is most clearly established, that on the evening of 15th May last, while Pascoal was bathing in front of his own house, at Andheree, he was fired at by a person or persons from a passage nearly opposite his house, and which divided his cow-house from the house of prisoner No. 2 (Luis), and that one bullet and a slug were found partially flattened against the steps and wall of the house behind him. There can be no doubt that whoever fired at Pascoal must have intended to kill him, and the only questions for me to determine are—

First. Did one or more of the prisoners fire at Pascoal?

Second. If one of the prisoners fired, did the others aid or assist him in the act?

I may, in the first place, remark, that it is not clear whether one gun or two were fired. Pascoal now states that he saw both the prisoners (Theodosius and Luis) fire at him; and other witnesses, Nos. 5 and 6 (Carlo Kinee and Agustinho Baretto), declare that they heard two reports, but, inasmuch as in the first deposition made by Pascoal on the night of the occurrence (Exhibit No. 9) it is only entered that the prisoner No. 1

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(Theodosius) fired, while Luis (prisoner No. 2) stood near and told him to shoot without hesitation, the evidence that Luis fired is not satisfactory.

Three witnesses, Nos. 4, 5, and 6 (Jeronimo D'Almida, Carlo Kinee, and Agustinho Baretto), two of whom were in Pascoal's house at the time, and the other bathing near his own dwelling-place on the opposite side of the street, depose, that after hearing the report they ran down the passage from whence the shot had been fired, and saw the three prisoners making off through the enclosure at the back of the house of the prisoner No. 2; and a fourth, witness No. 7 (Pedro Baretto), a rèlation of Pascoal's, who lives in a house not far from Pascoal's and on the same side of the street, deposes that he heard the report and outcry that Pascoal had been killed, while sitting on his cart at the back of his house, and that he immediately got down and ran round the other side of the house of the prisoner No. 2 (Luis), and that he saw the three prisoners making off through the fields at the back of that house. It is also established by the evidence of the witnesses Nos. 8, 11, and 14 (Gunesh Seoram, the Tulatee, Wasdeo Keshao, the Police Patel, and Ramchundra Kelkur, the Joint Police Amuldar), that some eight or nine days previous to Pascoal's being wounded, he complained that prisoner No. 1 had pointed a gun at him which missed fire, and that the District Police Officer, who did not consider the charge established by the evidence which Pascoal brought forward to support it, caused the prisoners to furnish security to keep the peace towards Pascoal.

If the witnesses Nos. 4, 5, 6, and 7 are to be believed, no doubt can be entertained of the criminality of the prisoners. Is, then, their testimony credible? These witnesses, though remarkably deficient in intelligence, have given their evidence in a straightforward manner. Their statements do not correspond in every minute

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particular, but are generally consistent, and their probability is greatly strengthened by the description given of the locality by witness No. 14 (Ramchundra Kelkur, Joint Police Amuldar), and others.

The prisoners object to the testimony of these witnesses and that of Pascoal, on the ground that Pascoal's statement differs materially from that which he is recorded to have made on the night of the occurrence (Exhibit No. 9), and because the witnesses Nos. 8 and 11 (Gunesh Seoram, the Tulatee, and Wasdeo Keshao, the Police Patel) declare that the witnesses Nos. 4, 5, 6, and 7 (Jeronimo, Carlo, Agustinho, and Pedro) did not mention on that night that they had seen the prisoners running away after the shot was fired. The inquiry made by the Village Police was evidently a very unsatisfactory one, and I do not credit the assertions of the Patel and Tulatee on this point, which are contradicted by the statement of the Peon, Naroo Wareek (witness No. 12). The tardiness of the Patel and Tulatee in reporting the matter; the vague nature of the statement which they were content to receive from Pascoal; their neglect to send persons at once to the different villages where the prisoners Nos. 1 and 2 (Theodosius and Luis) were said to have gone; all lead to the conclusion that they were disposed to screen those prisoners, who are persons of some influence, and prevent my placing reliance on their statements.

The prisoners have each set up an *alibi*. The prisoner No. 1 (Theodosius) states that he went to Marol at half-past 2, and remained there at Miguel Patel's house till 8 P. M., when he went to Kondiate, where he passed the night. Before the Deputy Magistrate, Miguel Patel denied that the prisoner had visited him as alleged, but, through an oversight, this witness was not summoned on the part of the prosecution. Three witnesses, Nos. 20, 21, and 22 (Francisco Fernandez, João Mariano de

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Souza, and Vincente Pimento), have been brought, one of whom declares that he saw the prisoner at 8 P. M. on the day in question at Miguel Patel's, and the other two that they saw him at half-past 7. The shot is said to have been fired at 8 P. M., but, as there was no time-piece in either village, it is obvious that in both cases only an approximation to the time could have been given. The Police Patel of Andheree and the Joint Police Amuldar declare that Marol is only a coss (or two miles) from Andheree, so that the prisoner might easily have reached there within fifteen minutes after firing the shot, and his having failed to prove that he was at the village the whole afternoon, as he himself stated, can only lead to the conclusion that his assertions in this respect are false. Another witness, Aleixo Criado (No. 23), states that he was told by a Mhar that the prisoner had left word at his (witness's) house, at Kondiate, about 3 P. M., that he should return in the evening, and that the prisoner himself came to Kondiate about half-past 8, and passed the night there, and left the next morning for Manee. Kondiate is only a mile and a half from Andheree, while Marol is half a mile further, on the road to Manee. The prisoner has given no satisfactory explanation of his having returned from Marol to Kondiate; if his intention was to proceed to Manee, then the evidence of his witnesses is altogether most suspicious and untrustworthy.

The prisoner No. 2 (Luis) has brought forward two witnesses, Nos. 24 and 25 (Jacinto Rodrigues and Maria Phillipa *alias* Makoo, wife of Jacinto Rodrigues), his relatives, who state that he was at Kaleena shortly before 8 on the evening in question. These witnesses state Kaleena to be six miles from Andheree, but the Police Patel (witness No. 11) says it is only four. As above remarked, the evidence of witnesses in this country in regard to time can but seldom be accurate, and no reliance can be placed on the statements of these witnesses

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regarding the exact time of the arrival of the prisoner Luis.

The prisoner No. 3 (Patricio) says that he returned from Bandora to his own village of Goondowlee on the day in question. One of the witnesses brought forward by him (No. 26) denies that he saw the prisoner on that day, and another (No. 27) states that he saw him up to 6 P. M. at Goondowlee, which is only a mile from Andheree; a third (No. 28) states that he saw the prisoner No. 3 and Esoob Telee at Villa at about 7 P. M. Villa, the witness states, is only a mile and a half from Andheree. When the examination of this last witness was concluded, the prisoner declined to call Esoob Telee and another person whom he had caused to be summoned.

This prisoner was arrested on the night that the attempt at assassination was committed, and appears to have been partially intoxicated, though some of the symptoms exhibited by him, viz. shaking and trembling, may be ascribed to fear as well as to inebriety. To the first inquiries of the Police, his wife denied that he was at home, though, on their threatening to force an entry, he came out and delivered himself up.

On the whole, after mature consideration of the evidence produced on both sides, I am of opinion that the prisoners have failed to prove their *alibi*, and that the first statement of the prosecutor Pascoal, that the prisoner Theodosius fired at him, and that the other two prisoners (Luis and Patricio) were with him, and abetted in the deed, may be credited. I also consider that the evidence of the witnesses Nos. 4, 5, 6, and 7 (Jeronimo, Carlo, Agustinho, and Pedro) may be believed, and I therefore convict the prisoner No. 1 (Theodosius de Crasto, son of Pascoal de Crasto) of *an attempt to commit murder;* in that he, on or about 15th May 1856, (corresponding with Wuishak Shood 11th, Shuké 1778,) in the village

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of Andheree, Talooka Salsette, Tanna Division of Zillah Konkun, did, without justifiable or extenuating cause, fire a gun, loaded with powder and bullets, at Pascoal Baretto, son of Pedro Baretto, who was bathing in front of his own dwelling-house, with intent to kill the said Pascoal Baretto, son of Pedro Baretto; and the two latter prisoners, Nos. 2 and 3 (Luis de Crasto and Patricio de Mello), of *aiding and abetting in the above offence.*

A more deliberate and cold-blooded attempt at assassination I have seldom met with, and I am of opinion that it calls for exemplary punishment. I therefore sentence each of the prisoners to be transported beyond the seas for the term of their natural lives. Subject to the confirmation of the Court of Sudder Foujdaree Adawlut. (Regulation XIV. Section XXVI., and Section I. Clauses 2nd and 5th, of 1827.)

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case there appears no room to doubt that the complainant was fired at as alleged, and the question is whether the prisoners are guilty of the attempt to murder, and aiding therein. The proof consists of their recognition by the complainant and four witnesses. The former has given different accounts, severally before the Police when he accused five persons, and in the Sessions Court when he accused the three prisoners only; and the enmity shown to exist between the parties, while it affords motives for the crime, affords motives also for false accusation. In regard to the other four witnesses, who depose to following the prisoners at the time of the outrage, and recognising them in their flight, the Session Judge says that they may be believed; but I do not think that he relies with confidence on their testimony. They allege that they denounced the prisoners as the persons who had fired at the complainant on the night of the occurrence. The

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Police Patel, however, contradicts this; and it is extraordinary, if the assertion were true, that there should not have been some proof of it forthcoming. There are discrepancies in their statements.

The *alibis* set up are of little consequence one way or the other, for the distances at which the prisoners represent themselves to have been from the scene of the crime at about the time of its occurrence are so short, that they might have been traversed very quickly. I do not feel satisfied that the evidence to the identification of the accused is to be relied upon; there are no circumstances to support it collaterally; the guns of the prisoners were forthcoming, and they afforded no testimony against them. In my opinion the prisoners must be acquitted.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—I am not satisfied that the prisoners were identified by the witnesses. There is nothing to corroborate their testimony. The prisoners' houses were searched immediately after the shot was fired, and no recently discharged gun was found. I am inclined to think that the evidence has been got up to support Pascoal's statement, and that the conviction cannot stand.

Resolution of the Sudder Foujdaree Adawlut.—The prisoners are acquitted.

The Court find that the prisoners were charged with attempt to commit murder, and that two of them have been convicted of aiding and abetting in attempt at murder. "Aiding and abetting" being a definition of crime unknown to the Regulations, it should not have been employed by the Acting Session Judge in his finding.

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SURAT.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 22 of the Calendar of the Surat Sessions Court for 1856. Committed by the Third Assistant Magistrate, J. MORIARTY, on the 23rd June 1856. Tried by the Session Judge, H. HEBBERT, on the 8th and 9th July 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Gang Robbery, by Night, with Force.

Prisoners.—No. 1, Amla Huria, Bheel, aged 20.
2, Jitla Purthum, Bheel, aged 20.
3, Muncha Panchia, Bheel, aged 25.
4, Vesta Rasla, Bheel, aged 40.
5, Rusoolia Malia, Bheel, aged 30.
6, Muncha Chitia, Bheel, aged 45.
7, Dusria Dajee, Bheel, aged 25.
8, Raesing Vicha, Bheel, aged 50.
9, Bapoora Purthum, Bheel, aged 20.
10, Ajla Sonjee, Bheel, aged 30.

Charge.—Gang robbery, by night, with force; in that, on the night of Wuishak Wud 8th, Sumvut 1912, (corresponding with the 27th May 1856,) armed with bows and arrows, and swords, they, in company with certain others, yet unapprehended, entered the house of Duyashunker Oomashunker, in the village of Pardi Kobha, Talooka Hoorsud, Zillah Surat, beat him with bows and arrows, and otherwise intimidated him, and stole property, consisting of brass and copper vessels and clothes, valued at Rs. 7-13-6, of which Rs. 6-15-6 worth belonged to the aforesaid Duyashunker Oomashunker, and the rest to Mandia Baola, who was sitting with him; also, in that, at the same time and place, they forcibly broke into the house of Baee Champa, and stole property valued at Rs. 2, and thence, entering the house of Moria Gossain adjoining, stole property valued at Rs. 27-6-6; and in that, at the same time and place, they assaulted Mansing, Havildar of the aforesaid

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H. Hebbert, Session Judge.

village, and stole from him property valued at Rs. 3-1-0; thus stealing in all property valued at Rs. 40-5-0.

Prisoners plead not guilty.

Finding and Sentence by the Sessions Court.—The prisoners are charged with gang robbery, by night, with force, and are proved one after another, as they were apprehended, to have confessed before the Police. Some of them also pointed out where portions of the stolen property were concealed. In the houses of the rest, other portions of that property were found. Afterwards, they each and all freely made detailed confessions before the Joint Police Amuldar, which confessions they all, except Dusria (prisoner No. 7), ratified as freely before the Police Amuldar. The prisoners Nos. 1, 2, and 3 (Amla, Jitla, and Muncha) are further implicated by the evidence of the witnessess Muncha and Purtabia (Nos. 9 and 10).

The prisoners would now have it believed their confessions were extorted, and state, some of them, that they did not ratify the same before the Police Amuldar, and others, that they were influenced so to do by motives of fear. They are, however, wholly unable to substantiate their present plea. The fact that one of them, Dusria Dajee (prisoner No. 7), did not confirm his confession before the Police Amuldar seems satisfactorily to show no violence was used, or he would have been compelled to do as the others did. The Court, on these grounds, wholly rejects what the prisoners urge.

The Court is, on the evidence, fully satisfied of the prisoners' guilt, and they are each and all convicted accordingly of gang robbery, by night, with force; in that, on the night of Wuisbak Wud 8th, Sumvut 1912, (corresponding with the 27th May 1856,) armed with bows and arrows and swords, they, in company with certain others, yet unapprehended, entered the house of Duyashunker Oomashunker, in the village of Pardi Kobha, Talooka Koorsud, Zillah Surat, beat him with

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bows and arrows, and otherwise intimidated him, and stole property, consisting of brass and copper vessels and clothes, valued at Rs. 7-13-6, of which Rs. 6-15-6 worth belonged to the aforesaid Duyashunker Oomashunker, and the rest to Mandia Bosla, who was sitting with him; also, in that, at the same time and place, they forcibly broke into the house of Baee Champa, and stole property valued at Rs. 2, and thence, entering the house of Moria Gossain adjoining, stole property valued at Rs. 27-6-6; and in that, at the same time and place, they assaulted Mansing, Havildar of the aforesaid village, and stole from him property valued at Rs. 3-1-0; thus stealing in all property valued at Rs. 40-5-0.

The Court passes the following sentence:—

That you, Amla Huria, Jitla Purthum, Muncha Panchia, Vesta Rasla, Rusoolia Malia, Muncha Chitia, Dusria Dajee, Raesing Vicha, Bapoora Purthum, and Ajla Sonjee, be each imprisoned for a term of three (3) years, with hard labour, under Regulation XIV. of 1827, Section XXXVII. Clause 3rd.

* * * * * * *

The Court will forward to the Third Assistant Magistrate copy of its amended charge, in order that, by comparing the two, he may see where his own was inaccurate, and will request him to be more particular in framing the charge in future. Had his English proceedings been more full than they are, probably the errors observable would have been avoided.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—This is an unsatisfactory case, like many of those from Surat. The chief evidence is the confessions of the prisoners, who seem in that Zillah invariably almost to admit their guilt on accusation by the Police. The corroboration is by the Police finding the stolen property.

The Tulatee's story of the robbery of his house is

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ridiculous. He went to sleep, while the rest of the village was plundered. There are not, however, sufficient grounds shown for interfering with the sentence.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoners is rejected.

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AHMEDABAD.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 106 of the Calendar of the Ahmedabad Sessions Court for 1855. Committed by the Third Assistant Magistrate, H. B. LINDSAY, on the 15th September 1855. Tried by the Assistant Session Judge, C. WALTER, on the 3rd and 4th October 1855. Reviewed by the Acting Session Judge, H. NEWTON, on the 10th October 1855. Proceedings certified to the Sudder Foujdaree Adawlut on the petition of the prisoner.]

[For former proceedings is this case see pages 17 to 20, Vol. IV.]

Making a Fraudulent Use of a Forged Document, knowing it to be so.

Prisoner.—Leladhur Maheshwur, Brahmin, aged 25.

Charge.—With having made a fraudulent use of a forged document, knowing it to be so; in that, on Poush Wud 2nd, Sumvut 1911, (Friday, January 5th, 1855,) in Ahmedabad, he presented to one Hukumchund Panachund a document, bearing date Poush Wud 1st, Sumvut 1911, (Thursday, January 4th, 1855,) purporting to have been sent from Moundha, by one Moteebhae Kusulchund, and written by one Mugun Moteechund, recommending the bearer to the good offices of the said Hukumchund, who accordingly, on January 6th, 1855, obtained for the prisoner gold to the value of Rs. 2,746-13-4, with which he (the prisoner) absconded without paying for the same; the abovementioned document having been a forgery.

C. Walter, Assistant Session Judge.

Finding and Sentence by the Assistant Session Judge.—The prisoner is charged with making a fraudulent use of a forged document, and pleads not guilty.

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AHMEDABAD.

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The facts of the case are sufficiently detailed and proved in evidence. The defence is a simple denial, unsupported by any evidence. The question then is one of identification. Every one of the witnesses for the prosecution recognises the prisoner, so that, that he is the party who presented the letter there can be no shadow of doubt.

He is convicted of making a fraudulent use of a forged document; in that, on Poush Wud 2nd, Sumvut 1911, (5th January 1855,) he presented, in Ahmedabad, to one Hukumchund Panachund, a document, purporting to have been sent from Moundha by one Moteebhae Kusulchund, and written by one Mugun Moteechund recommending the bearer to the good offices of the said Hukumchund, who accordingly, on the next day, obtained for the prisoner gold to the value of Rs. 2,746-13-4, with which the prisoner absconded, he knowing well that the letter he presented was a forgery.

And the Court having found the prisoner guilty as above, proceeds to take into consideration that Act. XVI. of 1850 is inapplicable to the offence of which the prisoner has been convicted, so that the Court is unable to afford restitution to the injured parties. The Court determines to pass the following sentence:—

That you, Leladhur Maheshwur, be imprisoned, and kept to hard labour, for the period of three (3) years. Subject to the confirmation of the Acting Session Judge. (Regulation XIV. of 1827, Section XVII. Clauses 2nd and 3rd.)

Letter from the Assistant Session Judge to the Acting Session Judge.—I have the honour to submit, for confirmation, my proceedings in the case of Leladhur Maheshwur, who has been convicted of making a fraudulent use of a forged document.

H. Newton, Acting Session Judge.

Reviewed by the Acting Session Judge.—The prisoner is charged with having presented a forged letter to

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Hukumchund, purporting to have been written by a relation of the latter, who, in reliance on it, procured for the prisoner a quantity of gold, valued at Rs. 2,746-13-4. The prisoner immediately afterwards decamped, and not a particle of the gold, or its value, has been recovered.

The prisoner's defence is a denial that he presented the note, and the charge is therefore conclusively established against him by the abundant and unexceptional evidence recorded to prove his identity.

The offence is rendered a most serious one by a consideration of the large amount of property which was obtained by its perpetration. The prisoner was previously tried by the Assistant Session Judge on a charge of breach of trust, when a sentence of two years' imprisonment, with hard labour, and restitution of the stolen property, under Act XVI. of 1850, was recorded; but this decision has been held unsound by the Sudder Foujdaree Adawlut. As the Act quoted does not, unfortunately, allow the Sessions Court to add to the sentence on the present charge an order for summary recovery of the amount fraudulently obtained, by distress and sale of the prisoner's property, and thus to some extent to compensate the injured parties for the great loss which they have sustained through this atrocious fraud, the sentence passed by the Assistant Session Judge does not appear heavier than the case demanded, and it is therefore confirmed by this Court.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The prisoner in this case is convicted of having made a fraudulent use of a forged document—a letter of introduction—dated Poush Wud 2nd, Sumvut 1911, purporting to have been sent by Moteebhae Kusulchund, of Moundha, and to be written by his grand-child, Mugun Moteechund, to Hukumchund, in Ahmedabad, who, as is alleged, relying on its validity, became security for the purchase, on the day following

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the presentment, by the prisoner, whom he had seen once before in his life, of gold to the value of Rs. 2,746-13-4, which he was allowed to take possession of, and with which he decamped without paying for the same.

The prisoner was first tried and convicted of the fraud, which conviction was set aside in this Court on the 5th July 1855, it being held that that charge could not be sustained, and he was ordered to be indicted for forgery. There is nothing in the shape of proof in these proceedings that the prisoner committed forgery, but the charge on which he has been tried is using a forged document. It is held to be proved by the Assistant Session Judge, and by the Session Judge in confirming the sentence, that the prisoner did bring the document No. 6 to Hukumchund on the date stated, obtained the gold on Hukumchund's security, and decamped with it.

There are, however, some startling circumstances connected with the case which render it difficult to concur in the verdict.

Moteebhae, from whom the prisoner is stated to have come, is well known to Hukumchund, a connection by marriage existing between their families, and the latter is in the habit of receiving letters from the former. He must be presumed to be well acquainted with his handwriting. Can it be believed that he could be deceived by the production of a note not in Moteechund's handwriting, not purporting to be signed by him, but by a child, his grandson, stated by Moteechund on the former trial to be eight years of age, at school, and unable to write, and which we further find does not purport to be in the prisoner's favour by name, but only calls upon Hukumchund generally to assist the bearer? Or, if we can imagine that Hukumchund, through some infirmity of age or defective vision, was so imposed upon, can we suppose his two Goomastas, who were present, overlooked the contents of this note, and after the lapse of twenty-four hours

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allowed their principal, without remonstrance, to become security for a stranger to the amount set forth? It is not for the Court certainly to inquire too minutely in such a case how far the alleged forged document was likely to deceive a man in possession of his senses, for that might deprive the weak of the protection which the law is intended to give them. But there must, I apprehend, be some limit to this caution, and if it is absurd to suppose that a shrewd trader like Hukumchund, and his Goomastas, could be taken in by such a note as is above described, then a suspicion must arise that the case in Court does not present all the circumstances, and that it has been got up to dispose of some dispute between the parties.

Comparing these proceedings with those held on the former trial, I find discrepancies in the evidence as to the manner in which the gold was entrusted to the prisoner, and as to the date of the transaction; nor are they of trifling character, for it was to be expected that parties, who allege they have been defrauded in so barefaced a manner, would relate with some accuracy the particulars of the affair and the date of its occurrence. For example, the complainant Hukumchund, who deposed on the trial for fraud that the prisoner came to him on the 5th Poush Shood, in these proceedings states it was in the month of Poush only. Unless, indeed, the English record is very incorrect, all the witnesses on the former trial deposed to the crime occurring in Poush Shood, or fifteen days before it is charged, while in the present case the majority of the witnesses depose to the same date; but the English and Guzerathee versions in several instances differ.

It is further to be observed that Moteebhae was distant only twenty coss, within reach of reference, which adds to the improbability that Hukumchund would, without applying to him on such a note as Exhibit No. 6, become security for a large amount.

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R. Keays, Acting Puisne Judge.

I must give my judgment for the annulling of the conviction.

Minute by Mr. Keays.—The great point in favour of the prisoner in this case is that the letter on which the alleged credit was given is dated Poush Wud 1st, corresponding with 4th January 1855; next, that it purports to have been written by a child of eight years of age; and, lastly, that the credit is stated by the witnesses to have been given on 20th December 1854, that is fifteen days before.

I must admit that the objections are of some weight, but when I consider that it is clearly proved that the gold was delivered to the prisoner; that he decamped with it; that, in the first instance, when the prisoner was convicted of fraud on the most clear and incontestible evidence, and escaped the punishment he so richly deserved only because the Judges were of opinion that the charge of fraud did not meet his case;—when I remember also that this letter was fabricated by the prisoner himself, and these dates were entered by himself, or at his instance, I cannot bring myself to consider him entitled to acquittal on such technicalities, and I am of opinion that the conviction and sentence should be confirmed.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

W. E. Frere, Puisne Judge.

Minute by Mr. Frere.—The prisoner in this case was originally tried for fraud, in having brought forged papers to Hukumchund, by means of which he procured some gold from Mohunlal and Turbovin, and having agreed to pay the money, absconded without doing so, and being convicted was sentenced to two years' imprisonment, and to pay a fine, to be levied by distress. This conviction and sentence were annulled on the 5th July 1855, by the Sudder Foujdaree Adawlut, the provisions of Section XL. Regulation XIV. A. D.

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1827 not applying to the case, the goods having been delivered to him as the supposed purchaser, and not merely entrusted to his charge as required by the above-quoted Section; but the Court desired that a charge of forgery should be prepared against him.

It is very clear that a charge of fraudulently disposing of property entrusted to his charge would not hold against the prisoner, for the property in question was never entrusted to his charge. The case appears to me to have been a clear case of robbery, and, in annulling the former conviction and sentence, I should have suggested that the prisoner should have been tried on that charge. This, however, the Judges who disposed of the case, no doubt for good reasons, of which I am not aware, did not do, but they directed that a charge of forgery should be prepared against him, he having made use of a letter of introduction supposed to be forged, and by which he was enabled to treat with Mohunlal and Turbovin, and get possession of the gold.

He has now been tried on a charge of making fraudulent use of a forged document, knowing it to be so; he merely denied the charge, and made no defence. It appears to me very clearly established that he did take to Hukumchund a note purporting to be a letter of introduction from Moteebhae, and that, on the strength of that letter, and showing Hukumchund that he was acquainted with Moteebhae's family, he induced him to introduce him to Mohunlal and Turbovin, from whom, under the pretence of purchasing, he stole some gold. There is no doubt of the letter being a forgery, and Leladhur makes no attempt to disprove it; and I think, therefore, that there is proof sufficient that he made a fraudulent use of a forged document, knowing it to so, and that the conviction and sentence need not be disturbed, though I would myself rather have tried him for the robbery than for using the forged letter.

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None of the witnesses appear to have been examined as to the accuracy of the dates they mention, and I therefore do not place any weight on the difference in dates pointed out by Mr. Harrison. I do not find that Hukumchund stood security for Leladhur; he was made to pay six annas in the rupee of the loss, but that was by the Punchayet, and, as far as I can see, without his having ever undertaken any responsibility, but because it was fair that he and the other men who had been duped should share the loss between them; and I am not surprised at his having assisted Leladhur by sending for the gold-sellers, which was all he appears to have done, though the letter of introduction was not in Moteebhae's handwriting, nor signed by him, since Leladhur in conversation showed that he knew the names of all Moteebhae's relations.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoners is rejected.

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Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case of Aleixo wulud Salvador de Souza, and others, disposed of by the Acting Deputy Magistrate, DADOBHA PANDOORUNG, on the 4th July 1856. Proceedings certified on the requisition of the Sudder Foujdaree Adawlut, on the petition of the prisoner Aleixo wulud Salvador de Souza.]

Precautionary Measures.

Proceedings of the Acting Deputy Magistrate.—On examining the papers in these proceedings, received from the Police Amuldar of Salsette, whose sentence against the prisoners in this case, No. 1 (Aleixo wulud Salvador de Souza), No. 2 (Lazaro Manoel Quinee) No. 3 (Andre wulud Antonio Crasto), No. 4 (Abdool Kasim), No. 5 (Mariano Francisco), No. 6 (Antonio oorf Babool Caetano), No. 7 (Silvestre Francisco), and No. 8 (João Antonio), has been considered both by the

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Superintendent of Police and the Magistrate to be inadequate to the offence proved against them; the Magistrate has resolved to adopt precautionary measures, under Regulation XII. Section XXV. of 1827, against them, and the Padre Mariano Baptista, against whom there is strong reason to suspect that he was the chief instigator in this and other quarrels which occur so often in the village of Goray, by taking securities from them for their future good behaviour, inasmuch as they shall not each and all commit any personal assault, or destroy the property of others either by fire or otherwise, or instigate others so to do; and the Acting Deputy Magistrate has been instructed to give effect to this resolution, which he does this day, as follows:—

That you, Padre Mariano Baptista, being strongly suspected of being the chief cause in fomenting these quarrels among the inhabitants of the village of Goray, and giving annoyance to them after having secured the assistance of some men of bad character of the said village, are required to give security in the sum of five hundred (500) rupees, commutable to one (1) year's imprisonment, for refraining yourself from committing any of the offences mentioned above for a period of three years.

That you, Aleixo wulud Salvador de Souza, being strongly suspected of having set fire to the house of one Miguel Cafree (for it is in evidence that, previous to the destruction of this house by fire, you distinctly stated before some persons, when the same was being under repairs, that they would see what would become of it in less than three days); that you being also strongly suspected of having destroyed some cocoanut trees belonging to one Antonio Francisco Henriques, Patel of Goray; and that you having twice been fined for committing assaults, and once given security for your good conduct, are now required to find security in the sum of five hundred (500) rupees, commutable to one (1) year's

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imprisonment, for refraining yourself from committing any of the offences mentioned above for a period of three years.

That you, Lazaro Manoel Quinee, having twice been fined for committing assaults, being now convicted of having committed petty assault, and sentenced to imprisonment by the Police Amuldar of Salsette, and being also suspected of having destroyed some cocoanut trees belonging to one Antonio Francisco Henriques, Patel of Goray, are now required to find security in the sum of four hundred (400) rupees, commutable to one (1) year's imprisonment, for refraining yourself from committing any of the offences mentioned above for a period of three years.

That you, Andre wulud Antonio Crasto, you, Abdool Kasim, you, Mariano Francisco, and you, Antonio oorf Babool Caetano, having been convicted of the commission of an assault, and sentenced to imprisonment by the Police Amuldar of Salsette, and being strongly suspected of having destroyed some cocoanut trees belonging to one Antonio Francisco Henriques, Patel of Goray, are now required each to find a security in the sum of three hundred (300) rupees, commutable to one (1) year's imprisonment, for refraining yourselves from committing any of the offences mentioned above for a period of two years.

That you, Silvestre Francisco, and that you, João Antonio, being suspected of having committed this assault, and of having destroyed the same trees, are now required to find each a security in the sum of one hundred (100) rupees, commutable to six (6) months' imprisonment, for refraining yourselves from committing any of the offences mentioned above for a period of one year.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to certify the papers and proceedings connected with the matter set

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forth in the accompanying petition from Aleixo wulud Salvador de Souza, convict in the Tanna Jail, which accompanied the Register of Petitions handed up by the Acting Session Judge of the Konkun on the 20th ultimo, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate of Tanna begs to certify the papers and proceedings connected with the case of Aleixo wulud Salvador de Souza, a convict in the Tanna Jail, as called for in the within Precept.

The petition received with this Precept is returned.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoner is rejected.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

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[Case No. 98 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate, W. A. RITCHIE, on the 9th July 1856. Tried by the Session Judge, A. B. WARDEN, on the 29th July and 9th August 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut by the Session Judge.]

Serious Assault, attended with Murder.

Prisoner.—Noorkhan Hazrut, Mussulman, aged 35.

Charge.—Serious assault, attended with murder; in having, on or about Wednesday, April 16th, 1856, (corresponding with Chuitru Shood 11th, Sumvut 1912,) at Morassa Village, Purantej Talooka, Ahmedabad Zillah, within the Guzerat Irregular Horse Post Lines, purposely, and without justifiable or extenuating cause,

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discharged a carbine, loaded with ball, at Kumroodeen Bargeer, of that post, and immediately afterwards wounded him with a sword, thereby depriving him of life on the spot; further, with having then wounded Meetha Moostapha with a sword, from the effects of which the said Meetha died the same day; further, with having then wounded Buna Nathoo Bargeer and Alabux Shadekhan Kasdar with the same sword, to their grievous bodily injury; prisoner thereby rendering himself amenable to the provisions of Regulation XIV. of 1827, Section XXVI. Clause 1st, and Regulation XIV. of 1827, Section XXIX. Clause 1st.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—From the Inquest Report No. 3, which has been proved by the evidence of witnesses Nos. 1 and 2 (Kewul and Raichund), it is ascertained that the death of the deceased Kumroodeen was caused by a gun-shot wound, the bullet having passed right through the body; and from the Inquest Report No. 4, which has deen proved by the evidence of the witnesses Nos. 1 and 2 (Kewul and Raichund), it is proved that the deceased Meetha Moostapha's death was caused by several severe sword wounds. From the dying declaration of the deceased Meetha Moostapha, which has been proved by the evidence of witnesses Nos. 1, 2, and 14 (Kewul, Raichund, and Govindram), it appears that while he was on guard near the hut of Kureembux and other Sowars of the Guzerat Irregular Horse, who were stationed on out-post duty at the village of Morassa, he saw the prisoner at the bar approach and fire a carbine at the deceased Kumroodeen, who was playing on a drum and amusing himself, and on his (Meetha's) attempting to seize him, the prisoner attacked him with a sword, and inflicted several severe wounds.

By the evidence of Alabux (witness No. 12) it is proved that, while he was lying in his hut on the evening in question, he heard a shot fired, and on going out to

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ascertain the cause of it, he discovered that one of the Sowars (Kumroodeen), who was sitting on the ground, had been wounded, and had fallen over his drum, and that the prisoner at the bar and Meetha Moostapha were striking at one another with their swords. He therefore ran to give the alarm, and as he was returning, accompanied by Alee Hoossein Dufturdar, and Buna Bargeer, he was severely wounded by the prisoner, who rushed out from under a tree, and on Buna remonstrating with the prisoner, the prisoner also wounded Buna. The witness No. 6 (Buna) corroborates the evidence of Alabux regarding the attack made by the prisoner on himself and Alabux.

From the evidence of the witnesses Nos. 7 and 8 (Nunoo and Toolajee) it appears, that on hearing the shot fired, they ran out of their huts to see what was the matter, and found prisoner and Meetha Moostapha striking at one another with their swords.

The evidence of the witness No. 13 (Detarjee) proves that he seized the prisoner, who came running towards him with a drawn sword in his hand.

The evidence of the Thanadar, Gowindrow (witness No. 14), and of the witnesses Kewul and Jetha (Nos. 1 and 16), proves that the prisoner's confession, which has been recorded as No. 17, was given by him of his own free will. The prisoner, although he pleaded not guilty, admitted the above confession. In the said confession the reason assigned by the prisoner for committing the double murder is that the two deceased persons had been abusing him. Before the First Assistant Magistrate, and before this Court, the prisoner in his defence has urged that he was under the influence of liquor at the time; but the evidence of the witnesses for the prosecution proves that such was not the case; but even if it were, it would not in the least palliate his crime. From the evidence of the witnesses No. 12 (Alabux), No. 7 (Nunoo),

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and No. 8 (Toolajee) it appears that one of the deceased persons and others were amusing themselves by playing and singing, and that all of a sudden they heard a shot fired, but no quarrel or dispute of any kind preceded the report of the carbine. The carbine, which has been proved to belong to the prisoner, and which prisoner admits to be his property, was, on examination by the Thandar (witness No. 14), found to have been recently fired. Three Sowars (witnesses Nos. 9, 10, and 11), who are said to have been sitting with the deceased Kumroodeen when he was shot, deny that they were present; there is but little doubt that they were present, and their denial is either owing to their unwillingness to give evidence against the prisoner, or to fear of being punished for not having seized the prisoner at once. The Court considers that the guilt of the prisoner is most satisfactorily proved, and that there is not one extenuating circumstance; he is therefore found guilty of serious assault, attended with murder; in having, on or about Wednesday, April 16th, 1856, (corresponding with Chuitru Shood 11th, Sumvut 1912,) at Morassa Village, Purantej Talooka, Ahmedabad Zillah, within the Guzerat Irregular Horse Post Lines, purposely, and without justifiable or extenuating cause, discharged a carbine, loaded with ball, at Kumroodeen Bargeer, of that post, and immediately afterwards wounded him with a sword, thereby depriving him of life on the spot; further, with having then wounded Meetha Moostapha with a sword, from the effects of which the said Meetha died the same day; further, with having then wounded Buna Nuthoo Bargeer, and Alabux Shadekhan Kasdar with the same sword, to their grievous bodily injury.

After taking into consideration the nature of the offence proved against you, prisoner Noorkhan Hazrut, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVI. Clause 4th,

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of 1827, the sentence of the Court is, that you be hanged by the neck until you be dead, at the usual place of execution at Ahmedabad. This sentence is, however, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

The deposition of the deceased Meetha Moostapha, not having been taken in the prisoner's presence, ought not to have been recorded or used as evidence. The charge is fully proved. The plea of intoxication, even if established, would not mitigate the offence, and could not be urged in extenuation.

The charge should not have been "serious assault, attended with murder," but "murder, in having killed Kumroodeen and Meetha Moostapha," and "serious assault in having wounded" the others.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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TANNA.

[Petition of Luximonsett Dusrutsett to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Tanna, E. C. JONES, for Report, on the 11th June 1856].

[See pages 185 to 188, Vol. VI., for previous proceedings in this case.]

Enforcing Payment of the Revenue.

Return of the Magistrate to a Precept of the Sudder Foujdaree Adawlut.—In acknowledging the receipt of this Precept, the Magistrate of Tanna has the honour to state, that on calling upon the Sub-Collector of Colaba to certify papers, &c. connected with the case, in order to judge as to the conduct, &c. of the Mahalkuree of Tulé, that Officer reports as follows in handing up the papers:—

"With reference to your endorsement No. 1369, dated 13th August last, on a Precept from the Sudder Foujdaree

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Adawlut, No. 734, dated 7th idem, in the case of Luximon Dusrutsett, and subsequent letter, No. 1442, dated 25th idem, I have the honour to certify all the papers, &c. connected with the case. I have also forwarded the papers connected with four other charges against the Mahalkuree of Tulé, with my opinions recorded thereon. They are not of any very great moment or such as call for serious notice, but may be useful to refer to in forming an opinion of his character and conduct.

"I have delayed answering this reference a few days in the hope that I might have forwarded, along with these papers, the Mahalkuree's explanation on a charge preferred against him by the Collector of Sattara, of misconduct, in having fraudulently attached his signature to an envelope giving cover to Government correspondence forwarded by him in the first instance without his signature, to the Mamlutdar of Jowlé (Zillah Sattara), upon which, in consequence, postage was levied, and which, being returned to him for the purpose of recovering the amount, he seems wilfully to have then put his signature to, in order to evade payment. This charge seems clearly proved, and the action is so mean and discreditable in itself, that, if brought home to him, it must tell most unfavourably against his character. His reply, as soon as received, will be forwarded.

"I have in general found the Mahalkuree diligent and attentive to his duties. Lately I had to fine him for unnecessary delay in a criminal case, but this is a solitary instance. He is of a hasty, excitable disposition, and is apparently very much disliked among people of his own class.

"In answering this Precept, I should feel much obliged by your informing the Judges that I much regret they should have been led to suppose, from the tenor of my report, that I in any way meant to justify the conduct

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of the Mahalkuree. I merely wished to point out certain circumstances connected with the case which would have to be taken into consideration in disposing of this particular charge. My omission to notice that proceedings would be instituted against him in the Revenue Department (to which the case properly belongs) has, doubtless, misled the Judges, and they will, I trust, after this explanation, be satisfied that I had no intention of neglecting a plain and obvious duty.

"Should you think it the preferable course, and will so inform me, I will make this explanation direct to the Judges; but I see no reason why it should not go with the Precept."

The Magistrate considers that there can be no doubt that the Muhalkuree acted illegally, and, if not guilty of a criminal offence, has at least rendered himself liable to punishment as a Revenue Officer. An order has accordingly been issued by the Collector, directing the degradation of Narayen Abajee from the Mahalkureeship of Tulé to the situation of Karkoon, on Rs. 25 per mensem, in the Tanna Duftur. This will be reported on to Government in the Revenue Department.

The delay in returning this Precept within the specified time is attributable to the non-receipt of the papers called for from the Sub-Collector, which were received only on the 6th instant. The last reference between this Office and that of the Sub-Collector is dated the 11th instant.

Resolution of the Sudder Foujdaree Adawlut.—The Mahalkuree having been degraded, the Court have nothing to do but to record the present return.

The petitioner, in answer to his petition of the 17th instant, may be directed to petition the Magistrate to have his criminal charge against Narayen Abajee decided, and, if he is not satisfied with the Magistrate's decision or answer, he can appeal.

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RUTNAGHERRY.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Notice issued by the First Assistant Magistrate of Rutnagherry, G. SCOTT, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 10th September 1856.]

Notice by the Magistrate.

Notice.—It having been found that many people, under the pretence of collecting cow-dung, assemble at night at that part of the town of Chiploon, Turuf Chiploon, Talooka Unjunwell, of this Collectorate, where the bullocks and goods of the traders from above the Ghauts and others parts are wont to be picketed, in consequence of which the property belonging to the said traders is constantly being stolen; Notice is hereby given, according to the provisions of Regulation XII. of 1827, Section XIX., that all parties, except those whose bullocks or goods may be picketed on the aforesaid locality, are forbidden to go there from sunset to sunrise, either for the purpose of collecting cow-dung or any other pretence. Any person or persons who shall disobey this order will be punished agreeably to Clause 6th of the Section and Regulation aforesaid.

Letter from the First Assistant Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour herewith to forward for the approval of the Judges of the Sudder Foujdaree Adawlut a Murathee Notice, with its English translation, issued by me under Section XIX. Regulation XII. of 1827, in the Kusba of Chiploon, Talooka Unjunwell, of this Collectorate.

Resolution of the Sudder Foujdaree Adawlut.—If it were necessary to issue such a Proclamation as this, the limits within which intrusion is declared penal should be distinctly defined, instead of the prohibition being set forth as regards places where traders' bullocks "are wont to be picketed." Such a precaution, however, cannot be required only at the town of Chiploon; it

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would be needed also at every town or village on the lines of traffic through the country. The Magistrate is to be informed that the Court decline to sanction the Proclamation, and that he should make Police arrangements for the protection of traders halting at Chiploon, instead of punishing all who approach their vicinity between sunset and sunrise.

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RUTNAGHERRY.

Notice by the Magistrate.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

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POONA.

[Petition of Ramchunder Bapoojee *alias* Baboolia, to the Sudder Foujdaree Adawlut. Referred to the Acting Session Judge of Poona, C. M. HARRISON, for Report, on the 20th August 1856.]

Prisoner.—Ramchunder Bapoo *alias* Baboolia.

Perjury.

Charge.—Perjury.

Finding and Sentence by the Sessions Court.—To be imprisoned for two (2) years with hard labour, and pay a fine of two hundred (200) rupees, or be further imprisoned with hard labour for one (1) year.

C. M. Harrison, Acting Session Judge.

Petition of Ramchunder Bapoojee alias *Baboolia to the Sudder Foujdaree Adawlut.*—[Praying that the sentence passed against him might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Acting Session Judge.—You are hereby requested to report upon the matter set forth in the accompanying petition from Ramchunder Bapoojee *alias* Baboolia, a prisoner in the Poona Jail, which accompanied the Register of Petitions handed up by you on the 9th instant, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt. You are further desired to return the said petition with this Precept.

Return of the Acting Session Judge to the Precept of the Sudder Foujdaree Adawlut.—In execution of the

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POONA.

Perjury.

within Precept, the Acting Session Judge has the honour to state that the petitioner, Ramchunder Bapoojee *alias* Baboolia, was committed by the Hoozoor Deputy Magistrate, on the 31st March 1856, on a charge of aiding and abetting in uttering a false document. The case was, however, returned, and the Deputy Magistrate requested to re-commit him on a charge of perjury, of which he was convicted, and sentenced, on the 13th May 1856, to two (2) years' imprisonment, with hard labour, and a fine of two hundred (200) rupees, or further imprisonment for one (1) year, with hard labour, under the following circumstances :—

He deposed on solemn affirmation, before one of the Moonsiffs of Poona, to the validity of a bond upon which a claim had been filed in his Court, stating that he wrote it at the request of the defendant, and that it was witnessed, and the money paid in his presence. This bond was subsequently discovered to be a forgery, and the prisoner now admits that at the date of it he was a prisoner in the Criminal Jail, and could not consequently have written it, and he further denies all knowledge of it.

His defence is, that he did not make the statement regarding the validity of the bond before the Moonsiff as specified in the charge, and in support of this he called two witnesses to prove that on the date of his deposition a bond was executed to him at Kooluh, in the Punt Suchew's territory; it, however, came out, on cross-examination, that he was not present when this bond was written, and his deposition is otherwise satisfactorily proved by the evidence of the Sheristedar, who wrote it, and two other witnesses (the Nazir of the Moonsiff's Court and a Puttawala) who were present at the time, and who distinctly recognise him as the man who made it.

At the conclusion of the above proceedings, it having appeared to the Acting Session Judge that the prisoner was also guilty of forgery, it was suggested to the

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Magistrate that measures should be taken for prosecuting him for this crime also.

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POONA.

Perjury.

The original petition is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoner is rejected.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

1856 September 24.

KAIRA.

[Recommendation of the Magistrate of Kaira, J. R. MORGAN, on the 6th September 1856, to the Sudder Foujdaree Adawlut, for the detention of Gendal Jalum for a further period of two years, in default of furnishing security for his good conduct.]

Precautionary Measures.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to report, for the information of the Judges of the Sudder Foujdaree Adawlut, that one Gendal Jalum, of the village Mehlow, in His Highness the Gaekwar's share of the Peitlaud Purgunna, was tried by the Acting Session Judge of Ahmedabad, A. K. Forbes, Esq., on a charge of robbery, with force, by night, convicted of the same, and sentenced, on the 4th of October 1853, to two years' imprisonment with hard labour, and, on the expiration of this period of imprisonment, to be remitted to the Magistrate, that precautionary measures might be taken.

Accordingly, on the expiration of his sentence, the abovenamed prisoner was called upon by the Magistrate of Kaira, on the 5th of October 1855, to furnish security for his good conduct for three years, in the sum of Rs. 100, commutable to three months' imprisonment without labour. The prisoner, having failed to comply with this demand, was ordered to be confined in the Subsidiary Jail at this station, where he has since been imprisoned; but as the period of one year, for which I am authorised to detain him, will expire on the 5th proximo, I would beg the favour of your obtaining the sanction

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September 24.

KAIRA.

Precautionary Measures.

of the Judges (as required by Clause 1st, Section XXVII. Regulation XII. of 1827), for his further detention in confinement for the next two years.

Should the proceedings in this case be required for reference, I would beg to suggest that the Session Judge of Ahmedabad be requested to certify the same.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate is to be informed that security should only be demanded from those against whom there is suspicion that they are likely to commit wrongful acts. A man who has suffered two years' imprisonment for an offence, and been in Jail another year for want of security, ought, the Court think, to be allowed to show whether he is reformed or not. The Court, therefore, cannot sanction the prisoner being detained any longer, but the Magistrate might adopt the more mild precautionary measures contemplated in Clause 2nd Section XXVII. Regulation XII. A. D. 1827, until he sees the effect the punishment has had on Gendal Jalum.

1856
September 24.

SHOLAPORE.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 46 of the Calendar of the Sholapore Sessions Court for 1856. Committed by the Deputy Magistrate, W. RAYMER, on the 2nd July 1856. Tried by the Session Judge, T. A. COMPTON, on the 4th, 5th, and 7th July 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner Sudaseo Ramchunder.]

Conspiracy, or a Combination to Defeat the Course of Public Justice.

Prisoners.—No. 1, Sudasew Ramchunder, Brahmin, aged 42.

2, Damodhur Ramchunder, Brahmin, aged 26.

Charge.—Conspiracy, or a combination to defeat the course of public justice; in having, some time between

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SHOLAPORE.

Conspiracy, or a Combination to Defeat the Course of Public Justice.

9 and 10 o'clock on the night of Friday, the 27th June 1856, (corresponding with Jésht Wud 10th, Shuké 1778, Shukrawur,) in the town of Sholapore, in the Talooka and Zillah of that name, in a room in the house of the late Shidram bin Noroba, tampered with three witnesses (in a robbery case from Wairag, lately sent up for trial to the Sessions Court) named Vitaee, daughter of Kasee, Tookya wulud Suntoo, and Rama bin Balkrishna, and instigated them to repudiate their depositions when questioned in the Sessions Court, and to assert that the evidence had been forcibly extorted from them.

T. A. Compton, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners, Sudasew Ramchunder and Damodhur Ramchunder, are charged with conspiracy, or a combination to defeat the course of public justice, and both plead not guilty.

It appears that Vitaee, Tookya, and Rama (witnesses Nos. 2, 3, and 4) are principal witnesses in a case of robbery (to the amount of some Rs. 2,600) lately sent up for trial to the Sessions Court, and they all affirm that on the night of the 27th June 1856, about 9 or 10 o'clock, the two prisoners (one of whom is a Vakeel of the Adawlut and the other a Pundit) came to the house in which they (deponents) were lodging, and instigated them to repudiate before the Session Judge the depositions which they had given before the Superintendent of Police and the Second Assistant Magistrate, and to assert that they had been beaten by the Subedar Major of the Police Corps and his men, and their evidence forcibly extracted from them.

Tookya (witness No. 3), the servant of the principal prisoner in the robbery case, affirms that directly he heard the prisoner's proposal he left the room, went straight to the Foujdar's Chowree, and informed the Subedar Major what was going on; that the Subedar Major, taking two Sepoys with him, at once accompanied

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SHOLAPORE.

Conspiracy, or a Combination to Defeat the Course of Public Justice.

him to the house, and that they all listened outside the room before entering, and heard the work of subornation still being carried on.

The Subedar Major (witness No. 5) and his Sepoys (witnesses Nos. 6 and 7) fully corroborate Tookya's evidence, and state that, when they apprehended the two prisoners, they at once admitted the offence of which they had been guilty, and begged to be let off.

The evidence of all these witnesses has been given in a clear, straightforward manner, and the slight discrepancies, on which the prisoners lay so much stress, do not appear greater than those always found in the depositions of native witnesses, and the Court sees no reason whatever to discredit the testimony, or to believe the assertion of the prisoners that the accusation is a false one, trumped up against them by the Subedar Major.

The prisoners were taken in the fact, caught late in the evening in the lodgings of certain witnesses about to give evidence in the Sessions Court; they were furthermore overheard by the Police suborning two of the witnesses to perjure themselves, and the charge appears to the Session Judge conclusively established against them.

The prisoners both deny the truth of the accusation and assert that it is the result of enmity against them on the part of the Subedar Major; that they never went to Vitaee Kusbin's house, or suborned her and the other witnesses; and that they were apprehended by the Subedar Major whilst returning from a temple where they had been to pay their devotions.

They bring forward several witnesses to establish this *alibi*, but such evidence is only too easily procurable everywhere, and especially in Sholapore, and the Court feels compelled to reject it as wholly unworthy of credit. If the Subedar Major and his Police had really intended to seize the prisoners illegally, and concoct a false charge of conspiracy against them, it is in the last degree

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improbable that they would have carried out their purpose in the presence of so many witnesses and personal friends of the prisoner No. 1 (Sudasew); nor would the said friends have taken the matter so unconcernedly as they assert and gone quietly home, but they would have accompanied the whole party to the Chowree, certified that the prisoners had not been guilty of any offence or misdemeanor, and required their immediate release.

The evidence of these witnesses is, moreover, full of discrepancies. Keroo Mahadeo (witness No. 13) deposes that the prisoners waited for him and Govind Sukharam while they (Keroo and Govind) went to worship in the temple, because they were all *going afterwards to Lukshmee Dewee's* temple; but the prisoner No. 1 (Sudasew Ramchunder) and the others make no mention of this intention; and Govind Sukharam states that he asked the prisoner No. 1 (Sudasew) to wait for him because he (Govind) wished to consult him about a bond for Rs. 10 on which he was going to file a suit against one Ladoo Boorood; but Ladoo Boorood (witness No. 19) affirms that he only owes Govind Rs. 5, and that the latter has never asked him for the balance since the late high prices set in, and that he had not the slightest notion that Govind intended to sue him for the amount.

Apajee Govind (witness No. 15) affirms that he met Soobhansing and Baba Sété on that night, and that they all went to Vittoba's temple *together*. Soobhansing (witness No. 16), however, denies this, and denies that he even spoke to Apajee Govind, or saw the prisoner No. 1 (Sudasew) or the Police at all. The prisoner No. 1 (Sudasew) furthermore admits in his defence that he met Apajee Govind, and that *he did not speak to him*; but if, as he asserts, he had really been illegally arrested while walking quietly home so early in the evening, is it probable that he would not have appealed to Apajee Govind, and any other friend within sight or hearing?

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The prisoner No. 1 (Sudasew) lays great stress upon the circumstance that the prisoners in the Wairag robbery case are all in prison, and *therefore* could not have incited him to tamper with the witnesses against them, as if such services cannot be obtained by friends *outside* as well as by letters from prisoners *inside* the Jail.

The prisoner No. 1 (Sudasew) also urges that he only practises as a Vakeel in civil matters, and not as an advocate in the Sessions Court; but there are no reasons for supposing that the offence of suborning witnesses to perjure themselves is confined to Vakeels of *Criminal* Courts, or to any other particular class.

He alleges that the Subedar Major has got up the charge against him because he gave evidence against the Subedar in a case in which one Chimnajee Hurree had charged the latter with illegally seizing some 'joowaree;' but it appears that in so doing the Subedar Major was only obeying the Deputy Magistrate's orders: the charge was dismissed as frivolous and vexatious, and the prisoner No. 1 (Sudasew) in his deposition gave no evidence tending to criminate the Subedar Major; his name, moreover, was not in the petition (as he alleges) as one of the complainants against the Subedar.

The prisoner No. 2 (Damodhur) gives a long string of reasons for the enmity which (he asserts) exists against him on the part of the Subedar Major, but the Court is unable to attach any weight or importance to them whatever, whilst one or two of his assertions are undeniably false; for instance, the statement that the stolen 'tattoo' bought by the Roman Catholic Priest was sold to him by the Subedar Major; his allegation that the Subedar Major owes him a grudge because he has, in his capacity of Vakeel, obtained the release of so many prisoners, is, of course, absurd, for the Subedar must know that a Vakeel must earn his livelihood like others, and that if the prisoner No. 2 (Damodhur) had not been

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employed as advocate, some other Vakeel would have supplied his place.

It is somewhat remarkable that the prisoners do not attempt to cast discredit on the evidence of the witnesses Nos. 2, 3, and 4, on the ground of the youth of witness No. 2 and the want of respectability of the other two,—Vitaee (witness No. 1) being a prostitute, and Rama (witness No. 3) her servant.

The prisoners are convicted, on the evidence against them, of conspiracy, or a combination to defeat the course of public justice; in having, between 9 and 10 o'clock on the night of Friday, the 27th June 1856, (corresponding with Jésht Wud 10th, Shuké 1778, Shukrawar,) in the town of Sholapore, and in the Talooka and Zillah of that name, in a room in the house of the late Shidram bin Noroba, tampered with three witnesses (in a case of robbery at Wairag, lately sent up for trial to the Sessions Court), named Vitaee, daughter of Kashee, Tookya wulud Suntoo, and Rama bin Balkrishna, and instigated them to repudiate their depositions when questioned in the Sessions Court, and to assert that they had been beaten and their evidence forcibly extorted from them by the Police.

After a mature consideration of the offence which the prisoners have committed, together with the nature of the punishment provided for the same by Section II. Regulation XVII. of 1828, the Court proceeds to pass the following sentence:—

That you, prisoners Sudasew Ramchunder and Damodhur Ramchunder, be each imprisoned, without labour, for six (6) months.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The prisoners in this case have been convicted of conspiracy, in having tampered with witnesses summoned to depose in a case committed to the Sessions Court alluded to as the Wairag robbery case. The

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witnesses for the prosecution depose to having heard the petitioner, a Vakeel, and the other persons prompting the said witnesses at their lodging, at Sholapore, after dark, on an evening, to assert, when called upon to give evidence in the Sessions Court, that their former depositions had been extorted from them by the Police, in view to the acquittal of the persons charged with the robbery. Three of these deponents, who are the witnesses alluded to, state that this prompting took place; and three others, the Subedar of the Police, and two Policemen who were called to see what was going on by one of the former, also depose to hearing the prompting in the same words from without the door. This seems strange, for some time must have necessarily elapsed in the summoning the Police to the spot.

The prisoners call witnesses who swear to *alibis*, and to their apprehension in the street and not at the lodging of the witnesses. The Session Judge disbelieves all the evidence for the defence, because such is easily procurable, and relies on that for the prosecution. It, however, is not free from suspicion, and there is nothing to show that the prisoners had any interest in getting off the accused in the Wairag robbery.

It is evident that if the Police had procured three witnesses to depose to certain facts in a robbery case, it would not be difficult for them to get such persons to swear to their having been tampered with, and, by prosecution and previous trial of a charge of tampering, to obtain security for the original arraignment not breaking down. I do not say that this was the case here, but the possibility of it demanded a more particular scrutiny of the charge than it seems to me to have received. I do not think, looking to the whole case, that the alleged tampering is satisfactorily proved by independent testimony, and in my opinion the prisoners ought to be acquitted.

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R. Keays, Puisne Judge.

Minute by Mr. Keays.—I concur in the conviction in this case. I think the charge is clearly proved by the evidence of Vitaee, Tookya, and Rama, corroborated fully by that of the Subedar Major and his two Sepoys. The evidence brought forward in the defence I consider altogether unworthy of belief; such evidence is always procurable in large towns in this country, at very reasonable rates, and as the discrepancies in it are of themselves sufficient to render it of no value, I think the Session Judge was right in rejecting it. I should have been prepared to confirm a heavier sentence.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

W. E. Frere, Puisne Judge.

Minute by Mr. Frere.—I agree with Mr. Harrison in his view of this case. The prisoners have either conspired to pervert justice, or the Subedar Major Ramsing and Sayd Akbar have.

The proof turns upon whether the witnesses for the prosecution or those for the defence are the more worthy of credit. The Session Judge rejects the evidence for the defence on account of the discrepancies in their statements, and because such evidence is only too easily procurable everywhere, but especially in Sholapore. The fact is, I fear, undoubted, but such a declaration of it is only too apt to mislead, as in appreciating evidence; for if the evidence for the defence is to be suspected because evidence is procurable in the bazar for money, that for the prosecution must be open to the same objection.

The Session Judge admits that there are discrepancies in the evidence for the prosecution, but not greater, he says, than those always found in the depositions of native witnesses. It is the evidence for the defence only that has too much discrepancy in it for the Session Judge to think it trustworthy. I cannot, however, agree with the Session Judge in this opinion. The story given by the witnesses for the prosecution is that the prisoners tam-

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Conspiracy, or a Combination to Defeat the Course of Public Justice.

pered with them all three, while they only repeat three sentences of the conversation which passed, and which, according to their own account, must have extended over so long a time as to enable Tookya to go and fetch the Subedar Major, who yet arrived and overheard what—it appears from Vitaee's and Tookya's evidence—Sudasew said before the latter even went to call the Subedar Major. I should, under any circumstances, have doubted these statements, and have been unwilling to convict upon it.

But I further see that the prisoners, when apprehended, do not appear to have been taken at once, as I should have expected, from the Monthly Returns, to the Deputy Magistrate, or at any rate to the District Police Officer; but that it was the Superintendent who prepared the case, and sent the prisoners to the Deputy Magistrate. It appears that Vitaee and her companions would not be tampered with, so that there are no facts to aid our judgment, and all that we have to depend upon is the evidence of the witnesses. Until, then, I am satisfied that the evidence for the prosecution must be pure, and that the Police cannot combine to injure an obnoxious person (for Sudasew is shown to be obnoxious to them), I cannot concur in a conviction upon such evidence as is recorded in this case, and the prisoners must be acquitted.

Final Resolution of the Sudder Foujdaree Adawlut.—The conviction is annulled, and the prisoners to be discharged.

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ERRATUM.

At page 342, line 7 of the Reports for September 1856, *for* "(prisoners Nos. 2 and 3) confessed as usual. These two" &c., *read* "(prisoners Nos. 2 and 3) confessed. As usual these two" &c.

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CASES

DISPOSED OF BY THE

SUDDER FOUJDAREE ADAWLUT OF BOMBAY,

In October 1856.

Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

1856 October 1.

Ahmedabad.

[Case No. 69 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate, W. A. Ritchie, on the 1st May 1856. Tried by the Session Judge, A. B. Warden, on the 17th and 26th May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut on the petition of the prisoners.]

Prisoners.—No. 1, Muda Shabhaee, Mussulman, aged 20.

2, Gungaram Muncharam, Brahmin, aged 45.

3, Babajee Desuljee, Rajpoot, aged 30.

Culpable Homicide.

Charge.—Wilful murder; in having, on or about Friday night, April 18th, 1856, (corresponding with Chuitru Shood 13th, Sumvut 1912,) within the limits of Koowaree Village, Sanund Purgunna, Zillah Ahmedabad, purposely and without justifiable or extenuating cause deprived of life Lukshumon Kaloo, by wounding him with their swords and spears while endeavouring to seize him, he having escaped from their custody while

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AHMEDABAD.

Culpable Homicide.

A. B. Warden, Session Judge.

being brought to Sanund from the Lock-up, of which he had broken out the same night; thereby inflicting injuries from which the said Lukshumon there and then died, and thereby rendering themselves amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827.

The prisoners plead not guilty.

Finding and Sentence by the Sessions Court.—The prisoners are charged with wilful murder, in having wounded with their swords and spears one Lukshumon Kaloo, and thereby occasioned injuries which caused the death of the said Lukshumon there and then. The evidence of the father of the deceased (Exhibit No. 5) proves that the three prisoners, who are Sowars in the employ of the Thakoor of Sanund, came to his village about 3 o'clock one morning in search of his son, who, it appears, had broken out of the Lock-up in the village of Sanund, where he had been confined on a charge of robbery. The prisoners having discovered the deceased concealed in some straw, bound his hands behind his back, and, having fastened a strip of cloth round his neck, took him away. Shortly after their departure, some of the Police Corps also came in search of his son, and, on being informed that he had been captured and taken away by the prisoners, they desired witness to go with them and show them the way. As they were going along the road which had been taken by the prisoners and the deceased, they met one of the prisoners coming in search of the witness, and also for a cot, because it appeared that the deceased had been wounded in trying to effect his escape. The whole party then proceeded to the spot where the deceased was, and found him already dead. The Inquest Report No. 4, proved by the evidence of the witnesses Nos. 2 and 3, shows that the death of the deceased was caused by sword and spear-wounds. The voluntary confessions of the prisoners before the Magisterial Authorities, and before this Court,

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prove that the wounds which caused the death of the deceased had been inflicted by them while trying to recapture the deceased, who had managed to effect his escape. As these confessions of the prisoners prove that they killed the deceased, the point for the Court to decide is the degree of criminality which attaches to the prisoners. On the one hand, there were three armed, mounted men, trying to recapture a man unarmed and defenceless, for his hands were tied behind him; on the other hand, there were bushes about the place which afforded cover to the refugee. (Vide depositions Nos. 2, 3, 6, 7, and 8.) Again, this took place previous to the dawn of day, but whether it was moonlight or not, the Court has not been able to ascertain, the witnesses not being able to remember much about it, not even the prosecutor. The prosecutor's deposition must be received with caution, for it is to be expected that from the relationship that existed between him and the deceased, he would be somewhat prejudiced against the prisoners; this is apparent from the fact of his stating that the place was but thinly covered with bushes, whereas several uninterested witnesses have deposed that it was the reverse. The prosecutor has also deposed that one of the prisoners, No. 3 (Babajee), on his (prosecutor's) son (the deceased) being discovered concealed in the straw, said, "Cut off his head, what business had he to run away?" Now this speech, if really uttered (it is quite possible that it is an exaggeration), may have been said merely as a threat, without the slightest intention of acting up to it. The Court, having duly considered all the circumstances connected with this case, finds that there was neither malice prepense, nor any premeditation in the commission of the crime of which the prisoners are accused, so as to constitute murder. To distinguish murder from other killing there must be malice aforethought, either expressed or implied: the absence thereof is considered

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by the Court as divesting the crime, which has been committed by the prisoners, of that degree of criminality which would constitute murder; at the same time the Court is of opinion that the prisoners have been guilty of a most wanton and cruel act, and exhibited a criminal indifference to human life, in killing the deceased, for he was unarmed, and, owing to his being bound, unable to make the least resistance; the only palliation of their conduct, if palliation it can be considered, is, that had the deceased succeeded in effecting his escape (of which there was some chance owing to its being night-time, and there being bushes where he could easily conceal himself), they would have been severely punished. Under this view of the case, the Court acquits all the prisoners of the more heinous offence, and finds them guilty of culpable homicide; in having, on Friday night, April 18th, 1856, (corresponding with Chuitru Shood 13th, Sumvut 1912,) within the limits of Koowaree Village, Sanund Purgunna, Ahmedabad Zillah, without justifiable or extenuating cause deprived of life Lukshumon Kaloo, by wounding him with their swords and spears while endeavouring to seize him, he having escaped from their custody while being brought to Sanund from the Lock-up, of which he had broken out the same night, thereby inflicting injuries from which the said Lukshumon then and there died.

The view taken by the Court of the degree of criminality which attaches to the prisoners, is borne out by the decision come to in a somewhat similar case. (Vide Report of the Nizamut Adawlut, Vol. II. page 461.) After taking into consideration the nature of the offence of which you, prisoners Muda Shabhaee, Gungaram Muncharam, and Babajee Desuljee, have been convicted, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVII. of 1827, the sentence of the Court is that each of you be

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imprisoned, and kept to hard labour, for seven (7) years.

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AHMEDABAD.

Culpable Homicide.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case the prisoners, three Sowars, admit having killed the deceased, who was a prisoner in their hands, they having been charged with his conveyance to Sanund, whence he had escaped while in confinement on an accusation of robbery. They plead justification of the homicide, as putting their prisoner to death was the only means of preventing his escape. I do not think that this plea is made out. The deceased was not charged with such an offence as would have justified his life being taken in order to secure his person. The prisoners were mounted and armed, and it is not proved that there were circumstances in the time or place that could have rendered it necessary for them to cut almost to pieces a man unarmed and bound, in order to prevent his getting away from them if he ever attempted it. The period of darkness in the morning of the 19th April 1856, when the moon was thirteen days old, must have been very short, and it is not shown that facilities for escape from jungle, or inequality of ground of any consequence, existed. The Session Judge has taken, in my opinion, a merciful view of the case, in finding the prisoners guilty of culpable homicide, instead of murder, as charged, and I would remind him that malice is certainly implied in wanton sacrifice of life, and that we need go no further than the definition of murder in the Bombay Code, in order to come to a conclusion in such a case. The petition should be rejected.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—These three prisoners admit that they wounded Lukshumon, who was perfectly unarmed and incapable of resistance, by striking him with their swords and spears, wounding him severely twice, nearly cutting off his head, and inflicting a wound with a spear, four inches deep, in his body. I consider that

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the prisoners have been guilty of an act of great and unnecessary cruelty, and exhibited a shameful and wicked disregard of human life. I would not interfere with either conviction or sentence, but think that the prisoners should have been convicted of murder.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause to interfere, and reject the petition.

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POONA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 58 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, W. M. COGHLAN, on the 8th July 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 24th and 25th July, and 4th, 15th, and 25th August 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut by the Acting Session Judge.]

Wilful Murder.

Prisoner.—Rama bin Pandoo Guicowar, Koonbee, aged 30.

Charge.—Wilful murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in that you did, on Sunday, the 20th April 1856, (corresponding with Ruveevar, Chuitru Shood 15th, Shuké 1778,) at about 11 o'clock A.M., at or near a well about a quarter of a coss distant from the village of Bheworee, in the Talooka of Poorundhur, in the Zillah of Poona, purposely and without justifiable or extenuating cause deprive of life your wife Bheema, of twenty years of age, and your mother-in-law Razaee, aged fifty-five years, by beating them severally with large stones on the head and other parts of their bodies, so that they did then and there die.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder, and pleads not guilty.

It is in evidence, that being on his way to the 'jatra,' at Jejooree, with his mother-in-law Razaee, his wife Bheema, and his brother-in-law Nowlia, they, at about

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noon, on Sunday, the 20th of April last, arrived at a well near the village of Bhewuree, in the Poorundhur Talooka, into which his wife Bheema went to drink. Whilst she was so occupied, the prisoner, who was standing on the brink, hurled down large stones upon her, one of which struck her on the head, and, fracturing her skull, killed her; and then, on his mother-in-law (who had witnessed the assault, and ran to her daughter's rescue) approaching him, he similarly assaulted her with a stone or stones, and, fracturing her skull, also killed her on the spot. Leaving his shoes, blanket, and a white turban lying near the body of his mother-in-law, he then ran off, and having taken off a white 'bundee,' or waistcoat, he had on, and thrown it away in a field beyond, he concealed himself under some bushes in a ravine, distant about half a coss from where this double murder had been perpetrated, and there he was shortly after discovered.

The prisoner made a full confession before the Police and Magisterial Authorities (at first under a feigned name), which he now repudiates; but it is proved to have been freely and voluntarily made, and without any improper persuasion or coercion, and it is abundantly corroborated by the whole of the evidence recorded for the prosecution.

The murder was witnessed by no less than three persons, the prisoner's brother-in-law Nowlia (a lad of about six years of age), a woman by name Guma, and her grand-daughter Savietree (a girl of about seven years of age), who had fallen in with the prisoner's party near the well at Bhewuree, above alluded to. Both these children gave their evidence in a very satisfactory, straightforward manner, the girl especially; she was, it appears, in the well with the prisoner's wife when he commenced assaulting her with stones, the boy having passed on with Guma and Razaee. The former states that Bheema was

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drinking water, and she was washing her hands, when the prisoner threw down a stone, which missed his wife, but another struck her on the head, and knocked her down, and a third also hit her on the head, and that she (Savietree) then ran up the steps, and made off. Guma and Nowlia also saw the prisoner throwing stones into the well; and they and Savietree state that Razaee, seeing him assaulting her daughter, ran back towards the well to rescue her, and that they then saw him knock her down and assault her also, by striking her on the head with a stone or stones. They then all three went to the village to procure assistance.

In the mean time the prisoner was seen making off with a white bundee or waistcoat on by a Mhar (Genoo), who was on his way from Poorundhur to Poona, and who had stopped to refresh himself under a mangoe tree not far from the scene of the assault. His attention was attracted to the spot by hearing a lad (Nowlia) call out, "Marlé! marlé!" and on proceeding in the direction of the well, he states that he saw a man running off wearing a white bundee or waistcoat, and that on the people from the village coming to the spot, he pointed out to them the direction in which he went. He states that he remained there until the prisoner was brought from the same direction, that he had not then on a white bundee, but immediately afterwards it was brought by another man.

Next comes the evidence of the parties who apprehended the prisoner and found the bundee, Ramjee, Rowjee, and Ramjee (witnesses Nos. 8, 9, and 10), who depose, the two former to having discovered him concealed as above described, and his having informed them where he had thrown away his bundee; and the latter, to having found it in the place he pointed out.

After being apprehended and brought to the well, the prisoner at once admitted that the shoes, blanket, and

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turban, found on the spot, were his, and that he had murdered his wife and mother-in-law, the former because she did not behave properly, and the latter because she raised an outcry, and would not let her live with him (see evidence of witnesses Tookaram and Vitojee, Nos. 21 and 24); and he now makes no defence, asserting merely his innocence, and that the case is a got-up one.

Under the above circumstances the Court entertains no doubt of his guilt, and he is accordingly convicted of murder; in having, on Sunday, the 20th April 1856, (corresponding with Ruveevar, Chuitru Shood 15th, Shuké 1778,) at about 11 o'clock A. M., at or near a well, about a quarter of a coss distant from the village of Bhewuree, in the Talooka of Poorundhur, in the Zillah of Poona, purposely and without justifiable or extenuating cause deprived of life his wife Bheema, of twenty years of age, and his mother-in-law Razaee, aged fifty-five years, by beating them severally with large stones on the head and other parts of their bodies, so that they did then and there die.

And after maturely considering the whole of the proceedings, the fact that no circumstance of extenuation for the murder is apparent on the face of them, and the punishment provided for the offence by Clause 4th, Section XXVI. Regulation XIV. of 1827, the following sentence is passed:—

That you, Rama bin Pandoo Guicowar, be hanged by the neck until you be dead, at the usual place of execution at Poona. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

* * * * * *

Before closing its proceedings, the Court has to bring to the Magistrate's notice that his Assistant, before examining the children, should have put them upon simple affirmation according to Act II. of 1855, and that, in wording the charge, he should use terms recognised by

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the Bombay Code, and not such as "feloniously, &c.," which are not to be found therein.

The Acting Session Judge has also very strongly to condemn the neglect of duty apparent in the preparation of this case by the Poorundhur Police Amuldar. He made over the prisoner's turban and blanket, which were found on the spot, to the prisoner, and used the white bundee or waistcoat (which has consequently not since been found) to bind up the prisoner's head when he was sent to the Civil Hospital. It must be needless to observe that all these should have been forwarded with the case.

Excepting also that of the child Nowlia, no evidence was sent up to connect the prisoner's shoes and the deceased's ornaments with the case, and none to connect the stones which were forwarded with it; and when this was called for by the Court, no less than three references had to be made before sufficient was obtained, and it could not be ascertained whether the bundee was forthcoming or not.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence confirmed.

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TANNA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 57 of the Calendar of the Tanna Sessions Court for 1856. Committed by the First Assistant Magistrate, H. B. BOSWELL, on the 24th June 1856. Tried by the Acting Session Judge, H. P. ST.G. TUCKER, on the 29th July 1856. Proceedings submitted to the Sudder Foujdaree Adawlut on the petition of the prisoner.]

Culpable Homicide.

Prisoner.—Waghia Chingool, Kasar, aged 16.

Charge.—Murder; in that, on the 18th June 1856, (corresponding with Mitee Jésht Shood 15th, Shuké 1778,) in the afternoon, at Kusba Bhewndy, Talooka

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H. P. St.G. Tucker, Acting Session Judge.

Bhewndy, Tanna Division of Zillah Konkun, he did, without justifiable or extenuating cause, push Govind Bhika Sett into a well, on the edge of which he was sitting, and did thereby deprive him of life. (Regulation XIV. Section XXVI. Clause 1st, A. D. 1827.)

The prisoner pleads not guilty.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder; in that he did, on the 18th of June 1856, without justifiable or extenuating cause, push Govind Bhika Sett into a well, and thereby deprive him of life. That Govind Bhika Sett met his death by drowning in a well is clearly established. One witness, Baja Dada Sett (No. 6), declares that he saw the prisoner push the deceased into the well, and his statement is corroborated by Gunia Mhar (witness No. 8), who, at the time the deceased was drowning, saw the prisoner at the well. Sukhia Mhar (witness No. 9), who was with Gunia, declares that he saw another man with the witness No. 6 at the well at the time the outcry was made that a youth was drowning, but he is unable to identify the prisoner as this person; and the witness No. 5 (Balkrishun Bhika Sett), the brother of the deceased, saw the prisoner making off from the well as he approached it, after being informed by the witness No. 6 of what had occurred. The prisoner denies that he was at the well at all at the time in question; but the witnesses named by him to the Assistant Magistrate did not confirm his statement, nor have the two who have been examined in this Court. He at first declared his wish that five witnesses should be examined, but after the evidence of two (Nos. 12 and 13) had been taken, he declined to call any more.

After a mature consideration of the evidence adduced on both sides, I see no reason to doubt the statement of the witness No. 6 (Baja) that the prisoner did push the deceased into the well, and thereby deprive him of life;

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but I do not think it established that he did so with intent to kill. The witness states that when the deceased was sitting on the edge of the well, which was level with the ground, with his face towards the water, the prisoner went up behind him, and putting his hands on both shoulders, said, " I will push you in, I will push you in." The deceased said, " Don't, don't, I cannot swim;" but the prisoner gave him a push, which sent him into the water, and he at once sank, and did not rise again. The witness states that he called out to the prisoner from a distance of twenty-five paces not to push the deceased in, but the Mhars who were in the neighbourhood did not hear him do this. He also declares that he told the prisoner to jump in to extricate the deceased, but that the prisoner did not do so, though he is able to swim. On cross-examination, this witness has admitted that the prisoner said he would pull the deceased out when he rose, and before the Assistant Magistrate he also admitted that the prisoner had told him to give the alarm, but in this Court he has denied this. The prisoner, though able to swim, may not have been able to dive, and this circumstance, and fright and confusion, may account for his not jumping into the well. On the whole, from the statement of the witness No. 6, I gather that the prisoner pushed in the deceased rather in rough sport than with a malicious purpose; and though his act was most unjustifiable, I consider it to be divested of so much criminality as would constitute murder. I therefore convict the prisoner, Waghia bin Chingool, of culpable homicide, and sentence him to undergo three (3) months' solitary imprisonment from this date. (Regulation XIV. Section XXVII. of 1827.)

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The prisoner was charged with the murder of Govind Bhika Sett, by pushing him into a well, and has been found guilty by the Session Judge of culpable

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homicide; but the Session Judge appears to me to be in error in his finding. He says that he gathers from the evidence that the prisoner pushed the deceased into the well rather in rough sport than with a malicious purpose, and though the act was most unjustifiable, it was divested of so much criminality as would constitute murder; he therefore convicts him of culpable homicide. The offence clearly was not murder; for to constitute murder, the deceased must be purposely deprived of life, or the murderer must be committing or assisting in some unlawful act, the perpetration of which is accompanied by the death of a human being. In this case, it is very clear that Waghia did not push Govind into the well for the purpose of depriving him of life, and the Session Judge admits that his pushing him into the well was not in the perpetration of an illegal act, but in rough sport. He could not therefore be guilty of culpable homicide, for to constitute that the assailant must be engaged in some unlawful act. There is nothing unlawful in rough sport, and in my opinion the utmost Waghia has been guilty of has been the unintentional commission of homicide, and for that, under Clause 3rd, Section I. Regulation XIV. A. D. 1827, he is liable to punishment; but that which he has undergone already (two months' solitary confinement) is far heavier, in my opinion, than he deserves, and I would therefore annul the conviction and sentence, and direct his immediate discharge.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—It is not likely, if the prisoner pushed the deceased into the well, intending to murder him, that he would have put him on his guard first by announcing his intent. I concur in recording a conviction of the unintentional commission of homicide, and in the prisoner's discharge, because he has suffered sufficient punishment.

Resolution of the Sudder Foujdaree Adawlut.—The Court find that the homicide was unintentionally com-

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mitted by the prisoner, and that the punishment he has undergone is sufficient for the offence he has committed, and under Clause 3rd Section I. Regulation XIV. of 1827, they, therefore, annul the conviction by the Session Judge, and order the prisoner's discharge from Jail.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 91 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Second Assistant Magistrate, C. F. H. SHAW, on the 11th July 1856. Tried by the Session Judge, A. W. JONES, on the 9th, 21st, and 22nd August 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut by the Session Judge.]

Murder.

Prisoner.—Akoba bin Apajee, Hindoo, aged 28.

Charge.—Murder (Regulation XIV. Section XXVI. Clause 1st, A. D. 1827); in that he, the prisoner, did, on or about Saturday, the 14th June 1856, (corresponding with Jésht Shood 11th, Shuké 1778,) in the village of Boodehal, in the Chikoree Talooka, in the Belgaum Division of the Dharwar Zillah, purposely and without justifiable or extenuating cause strike one Saloo, his wife, with the rim of a copper vessel, thereby inflicting a wound on the head of the aforesaid Saloo, from the effects of which she died on Wednesday the 25th June 1856, (corresponding with Jésht Wud 8th, Shuké 1778.)

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoner is charged with murder, and pleads not guilty.

It appears that on the evening of Saturday, the 14th June 1856, a woman named Saloo, who had just been out of her house, was met by her husband and abused for having been away, and that the husband then struck her a blow on the head with the 'tumbaloo,' a metal water-pot which he had in his hand, and knocked her

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down. Some persons then interfered, and the quarrel went no further; but the next day, not contented with applying for redress to the Patel of the village, she started with her sister (witness No. 2) for Chikoree (six coss off) to complain to the Police Amuldar, and having arrived there on the 16th June 1856, her deposition was taken the next day, on the 17th; but according to Witness No. 2, from that day she seems to have got worse and worse, and finally died on Wednesday the 25th June 1856.

An Inquest was then held on the body, the report of which was proved before the Court, and shows that there was the mark of a blow on the left side of the head a little above the ear, and that it was supposed that the skull was fractured there, and that she died from the consequences of the blow.

The deposition of the deceased, which was proved before the Court, and the Report of the Inquest, and the evidence of witnesses Nos. 6 and 7, leave no doubt that the prisoner did strike this blow as stated in the charge; the deceased, however, states that the blow was struck with the rim, and the witnesses with the body or round part of the tumbaloo. From the effects of the blow, the Session Judge believes it was struck with the body of the tumbaloo, the prisoner holding it in his hand by the mouth, as described by the witnesses Nos. 6 and 7. In this way, as it weighs 1¾ lb., a blow with it would, no doubt, suffice to fracture any skull, even if given without great violence.

It is certain also that a blow in the position described would suffice to fracture the skull and cause death either by inflammation of the brain, or by driving a portion of the skull into the brain; and it is shown by her sister that she became ill at Chikoree about the third day after receiving the blow, which is what might have been expected in the case of an injury of the kind. The Session Judge, therefore, considers there is no reason to

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doubt that the death of Saloo was caused by the blow given her by the prisoner.

The prisoner denies the charge, but states that on the evening the blow is shown to have been given, he saw, as he was returning home, the deceased and a man named Anunda in the act of adultery, and that, on calling to them, they both ran away; that he pursued them, and when he reached his house, he found his wife standing in front of it with her head broken and bleeding; and he named a witness Raghoo, as having seen these two people running away from him; but Raghoo denied having seen this, and Anunda denied having ever had any intrigue with the prisoner's wife. The defence therefore proves nothing in the prisoner's favour.

Under these circumstances, as it is proved that the prisoner struck the blow which caused the death of his wife Saloo, the Session Judge is of opinion he must be convicted of murder; in that he, the prisoner, did, on or about Saturday, the 14th June 1856, (corresponding with Jésht Shood 11th, Shuké 1778,) in the village of Boodehal, in the Chikoree Talooka, in the Belgaum Division of the Dharwar Zillah, purposely and without justifiable or extenuating cause strike one Saloo, his wife, with a copper vessel, thereby inflicting a wound on the head of the aforesaid Saloo, from the effects of which she died on Wednesday, the 25th June 1856, (corresponding with Jésht Wud 8th, Shuké 1778).

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827 Section XXVI. Clause 4th, the following sentence is passed:—

That you, Akoba bin Apajee, be transported across the seas for the term of your natural life. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The witnesses Krishnajee and Abajee (Nos. 11

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and 12) not proving Saloo's deposition, or that it was made in the presence of the prisoner, the District Police Officer or Karkoon who wrote it should have been examined. The deposition, as it is, should not have been recorded. That Akoba struck the deceased, and that she died from the blow, is proved beyond doubt, and his defence has entirely failed; but I do not think that the offence amounts to murder.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is convicted of culpable homicide, and sentenced to six months' imprisonment, with hard labour.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

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[Case No. 86 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the First Assistant Magistrate, W. H. HAVELOCK, on the 8th July 1856. Tried by the Session Judge, A. W. JONES, on the 2nd, 4th, 14th, and 16th August 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut by the Session Judge.]

Prisoner.—Tumya bin Noorundapà, Lingayet, aged 25.

Murder, attended with Robbery.

Charge.—Murder, attended with robbery (Regulation XIV. Section XXVI. Clause 1st, and Section XXXVII. Clause 3rd); in having, on Monday, the 22nd June 1856, (corresponding with Jésht Wud 4th, Shuké 1778,) at Gudjundurghur, in the Badamee Talooka, in the Belgaum Division of the Dharwar Zillah, wilfully deprived of life, by strangling her with his hands, one Busee, the daughter of Busapa, a child of about six years old, and then possessed himself of certain gold and silver ornaments on her person, valued at about Rs. 21.

Finding and Sentence by the Sessions Court.—In this case the prisoner is charged with murder, attended with robbery, and pleads not guilty.

A. W. Jones, Session Judge.

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Murder, attended with Robbery.

It appears that, on Sunday, the 22nd June, during the absence of the complainant Busapa from Gudjundurghur, a little girl of his, named Busee, disappeared. On receiving this news at the village of Bundeehal, on Monday, he returned, and he says he heard, but cannot say how or from whom, that the prisoner had taken her; and he states further that he had himself a suspicion against the prisoner, because he had for the last month often treated the child to sweetmeats, and made great friends with her. He therefore looked for him all that day in Gudjundurghur, but without success, till the evening, when, he says, the prisoner was brought to him by one of his (the prisoner's) brothers, and he declares that when asked about the child, the prisoner exclaimed, "Why do you accuse me falsely?" and ran off; but there is nothing beyond the complainant's word for all this.

On the Tuesday morning, however, the complainant reported his suspicion to the Police Patel, by whose orders a Shetsundee (witness No. 8) went in search of the prisoner to his shop; and though the planks, of which the front of it (the moveable door) is made, were up (or closed), the prisoner was nevertheless found inside it.

On this same day also the body of the child was found, stripped of its ornaments, lying in the prickly-pear hedge, under the Fort walls. But the person by whom it was found in this state was not sent up to prove it. It then appears, from the complainant's evidence, that the prisoner admitted, when questioned at the Inquest held by the Police Patel on the body, that he had been concerned with others in the murder of the child.

In the course of this day also, it appears that the Joint Police Officer came to Gudjundurghur, and he deposes that the prisoner declared to him, first, that the murder had been committed as a sacrifice to discover treasure; but as the place where the murder was asserted by him to have been committed showed no signs of such a crime,

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he was taken back to the Chowree, where he told another story, and agreed to give up the property; but it had by that time got late, and nothing more was done that day.

The next day, Wednesday the 25th, the District Police Officer came, and an Inquest was held on the body of the child, the report of which was proved before the Court, and shows that, in the opinion of the members, the child had been strangled, and murdered for the sake of its ornaments.

In the morning of the 25th, the Joint Police Officer, the Police Patel, and a Jury of three residents of the town, with a Sepoy, accompanied the prisoner to his shop, which had been locked up by him when he was arrested, and to which another padlock had been added on the Tuesday evening by the Joint Police Officer. On this occasion, the prisoner opened the lock of the door with the key which he had been allowed to keep, and just inside the door were found two thick silver anklets which the complainant and another witness identify as having been those usually worn by the deceased child. The gold triangular ornament belonging to her was also found in a box just inside the door. In an inner division of the room, on a shelf, was found the child's gold 'talee,' and in a box of ashes was found a piece of one of the silver anklets, which had evidently been cut off by some sharp instrument in taking them from the child. These the complainant identifies as having belonged to his child.

The Assistant Magistrate remarks that the evidence as to the discovery of these ornaments is not satisfactory, but the Session Judge does not see that there is any reason to doubt that they were really found in the prisoner's house as stated, for the differences in the statements of the witnesses to the discovery of the ornaments only relate to details as to the position of the persons employed in the search, and the persons who actually picked them

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up, and these differences would never have occurred if the Police would conduct the search in such a way as that the witnesses, who are intended to prove its result, should be able to see the whole of it. As it turned out, the best witnesses would have been the Police Patel and the Sepoy Ranoo; but the Session Judge did not think it necessary to delay the case for their evidence.

In the prisoner's defence, the Vakeel says the chains were found so close to the door that they might have been put there by others; but there is no one to suspect of having done this in the first place, and, in the second, they were not the only ornaments found in the prisoner's house; and, third, it seems to the Session Judge, their being found near the door may be accounted for by this,—it is shown above that the Sepoy who went to arrest the prisoner found him in his shop with closed doors. The shop would, therefore, then, be nearly dark, and he must consequently have been doing something he did not wish others to see. In this case, therefore, it is probable, first, that this something was connected with these chain ornaments; and, second, that he was near the door for the sake of the light that might come through the chinks in its planks. If this were so, when he was interrupted by the Shetsundee coming to arrest him, he would, of course, have been unable to put the chains away--for to have hesitated in coming out might have brought the Shetsundee in upon him; and he would then have been detected with the ornaments beside him, which must at once have fixed him with the guilt of the murder. He, therefore, left them on the ground where he was sitting, and thus warded off detection for the moment.

On being taken back to the Chowree after the discovery of these ornaments in his house, the prisoner admitted having committed the murder, and his confession was taken down by the Joint Police Officer, and has been

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proved to have been given voluntarily. It appears that he denied this confession before the Assistant Magistrate, but that he made another statement very similar to that which he appears to have first made to the Joint Police Officer, admitting that he had been present when the child was sacrificed by others for the sake of discovering treasure, and that the ornaments had been made over to him at the time; but this statement he has also now denied. It was, however, proved before the Court to have been given voluntarily, and as it is corroborated by the discovery in his house of all the ornaments worn by the child, it may be used against him. The prisoner has not, before the Court, made any defence further than to deny the charge, and object to the evidence through the Vakeel. The Session Judge, therefore, considering the evidence sufficient to establish his guilt, convicts the prisoner of murder, attended with robbery; in having, on Sunday, the 22nd June 1856, (corresponding with Jésht Wud 4th, Shuké 1778,) at Gudjundurghur, in the Badamee Talooka, in the Belgaum Division of the Dharwar Zillah, wilfully deprived of life, by strangling her with his hands, one Busee, daughter of Busapa, a child of about six years old, and then possessed himself of certain gold and silver ornaments on her person, valued at about Rs. 21.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. Section XXVI. Clause 4th, and Section XXXVII. Clause 3rd, of A. D. 1827, the following sentence is passed :—

That you, Tumya bin Noorundapa, be taken to the common place of execution in Dharwar, and there be hanged by the neck till you are dead. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The evidence in this case certainly is not suffi-

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BELGAUM.

Murder, attended with Robbery.

cient for conviction. The prisoner's admission before the Assistant Magistrate, which he has retracted before the Session Judge, would, if borne out by the evidence, show that he had had some knowledge of the murder; but with only this retracted admission against him, I cannot even convict him of concealment after the fact.

The case has been very badly prepared. The child Busee was missed, it is said, on Sunday morning, but the only evidence to her being lost is her father Busapa, who left home on Saturday, and was recalled on Monday. There is no evidence that she was seen alive on Sunday, or that she had the ornaments, said to be discovered in prisoner Tumya's house, on her, when missed, or that the prisoner was seen in her company, or near her, on the Sunday before she was lost.

The evidence to the search of Tumya's house is most unsatisfactory. Muleshapa's evidence, deposing to the prisoner's having produced the ornaments and given them to the Joint Police Officer, though considered by the Assistant Magistrate trustworthy, is shown to be very incorrect by the Joint Police Officer himself, Hunmuntrow (witness No. 13), who shows that, with the exception of the talee, it was Ranoo Sepoy who found or produced everything that was found. The Session Judge is satisfied that the things could only have been placed where they were found by Tumya himself; but, with every respect for Mr. Jones's care and judgment, I do not feel satisfied on this point. The different accounts that Muleshapa (witness No. 7) gave before the Session Judge and the Assistant Magistrate, of the search of Tumya's house, and the difference that there is between the statements of the witnesses Hunmuntrow (No. 13), Somungowra (No. 6), and Somungowra bin Pompungowra (No. 11), compel me to doubt all the evidence to the search, for, though Hunmuntrow's, if he had been further examined, might have been found to

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Murder, attended with Robbery.

agree with Somungowra's, it would then be in some respects inconsistent with itself, at least it would show that his first statement was so loose that he was not a witness upon whose evidence you could place implicit confidence.

At page 23, in the prisoner's statement, allusion is made to excrement lying on the ground in the corner of the shop; of this no notice is taken either by the Assistant Magistrate, the Session Judge, or the Police. It does not appear that the prisoner has any children, and any thing so unusual ought to have attracted attention and been more particularly noticed in the case. Suspicion attaches itself to the prisoner, but there is not evidence against him, and he must be acquitted and discharged.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—I concur with Mr. Frere as to the unsatisfactory nature of the inquiry in this case on the points he has noticed, which leaves the prisoner's retracted confessions unsupported by reliable evidence, so that a conviction cannot be upheld against him.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is acquitted, and to be discharged.

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KAIRA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 118 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the Deputy Magistrate, W. F. A. SPRY, on the 5th August 1856. Tried by the Session Judge, A. B. WARDEN, on the 14th August 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut by the Session Judge.]

Attempt to Commit Murder.

Prisoner.—Guman, wife of Gulabhaee Jambhaee, Kolee, aged 15.

Charge.—Attempt to commit murder; in having, on or about Sunday, July 6th, 1856, (corresponding with Ashad Shood 4th, Sumvut 1912,) in the village of

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KAIRA.

Attempt to Commit Murder.

Khoomurwaree, Talooka Matur, Zillah Kaira, wounded her husband Gulabhaee Jambhaee, of the said village, on the right side of his neck, with a knife, with intent to kill him, prisoner thereby rendering herself amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827, and Regulation XIV. Section I. Clause 2nd, of 1827.

* * * * * * *

Prisoner admits having wounded her husband, but says it was accidental, and not done with intent to kill him; a plea of not guilty is therefore recorded.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—From the evidence of the prosecutor Gulabhaee (witness No. 1) it is proved that on the night in question, after he had retired to rest, his wife came and laid down by his side, that towards morning he was awoke by some one cutting his throat, and found his wife standing by his side. On asking her who had wounded him, she replied, "God knows;" she then opened the door, and went out. As the room was dark, he only recognised his wife by her voice. The evidence of the witnesses Jawerebhaee (No. 2) and Jewee (No. 3) proves that the prisoner and her husband, on the night in question, went to the same house to sleep. From the evidence of the witness No. 5 (Juboo) it is ascertained that he found the blood-stained knife, before the Court, in the spot indicated by the prisoner. The prisoner, although she pleaded not guilty, has, before this Court, confirmed the confession made by her before the Police Amuldar and Deputy Magistrate; her confession has also been proved by the evidence of two witnesses (Nos. 6 and 7). The reason assigned by the prisoner for attempting her husband's life, is that he would not send for her to live with him. Her husband and another witness, however, attribute her design on her husband's life to her having taken a dislike to him. The evidence of the witnesses proves the wound

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Attempt to Commit Murder.

to have been of a very serious nature, and the scar which it has left leaves no doubt on the mind of the Court that the prosecutor has had a most providential escape. Under the above circumstances, the Court finds the prisoner guilty of attempt to commit wilful murder; in having, on or about Tuesday, July 6th, 1856, (corresponding with Ashad Shood 4th, Sumvut 1912,) in the village of Khoomurwaree, Talooka Matur, Zillah Kaira, wounded her husband, Gulabhaee Jambhaee, of the said village, on the right side of his neck, with a knife, with intent to kill him.

After taking into consideration the nature of the offence proved against you, prisoner Guman, wife of Gulabhaee Jambhaee, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVI. Clause 4th, of 1827, and Regulation XIV. Section I. Clause 2nd, of 1827, the sentence of the Court is, that you be transported beyond seas for the term of your natural life.

This sentence is, however, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward herewith, for the purpose of being submitted for the confirmation of the Judges, Case No. 118 of the General Calendar for the year 1856, together with extract from my proceedings of this day's date.

On account of her extreme youth, I beg to recommend that some other sentence be passed on her in lieu of that which I felt bound to pass.

Resolution of the Sudder Foujdaree Adawlut.—The conviction is confirmed, and the prisoner sentenced to six (6) months' solitary confinement.

The Session Judge ought to have examined Captain Jopp, or the doctor who dressed the wound.

The Deputy Magistrate does not, after he commits

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prisoners, ask whether they have any witnesses to call, which he should do.

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AHMEDABAD.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Reference from the Magistrate of Ahmedabad, J. W. HADOW, on the 23rd June 1856, to the Sudder Foujdaree Adawlut, recommending the detention, for another year, in Jail, of Sheroo Walee, Jafer Soojat, and Mayachund Premchund, in default of furnishing security for their good conduct.]

Precautionary Measures.

J. W. Hadow, Magistrate.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to request, in conformity to Clause 1st, Section XXVII. Regulation XII. of 1827, you will have the goodness to obtain the sanction of the Judges of the Sudder Foujdaree Adawlut for the detention, in Jail, of prisoners No. 1 (Sheroo Walee), No. 2 (Jafer Soojat), and No. 3 (Mayachund Premchund) for a further period of one year, from the date of the completion of the term of imprisonment to which they were adjudged by the Superintendent of Police on the 16th July 1855.

The prisoners were apprehended on suspicion of having committed a robbery, and two of the first-named prisoners were, on two former occasions, convicted of different offences, and punished. They were, therefore, called upon by the Superintendent of Police to furnish security for good conduct, the first-named prisoner in the sum of Rs. 200, the second Rs. 150, and the third Rs. 50, for two years, which they failed to do, and were therefore imprisoned.

The papers in the prisoners' case are herewith forwarded.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to report in detail the former sentences under which the prisoners were confined, and what their offences were.

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AHMEDABAD.

Precautionary Measures.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In conformity to the instructions conveyed in the extract of the Court's proceedings which accompanied this Precept, the Magistrate of Ahmedabad has the honour to report as follows :—

The prisoner Sheroo Walee was convicted of perjury, and sentenced by the Sessions Court to suffer six months' imprisonment, on the 18th June 1851.

He was also convicted of assault, and sentenced by the City Foujdar to pay a fine of Rs. 2, or, in default, to suffer four days' imprisonment, on the 4th November 1827.

The prisoner Jafer Soojat was convicted of breach of trust, and sentenced by the Hoozoor Deputy Magistrate to suffer three months' imprisonment, with hard labour, on the 27th December 1852.

On the 26th November 1853, he forfeited his recognisance bond, which was taken by order of the Deputy Magistrate, in the sum of Rs. 50, or, in default, to suffer one year's imprisonment.

Against prisoner Mayachund Premchund there appears to have been no previous conviction or sentence, except the fact of being found in company with the aforesaid prisoners under suspicious circumstances.

The papers and proceedings are herewith returned, as directed.

Further Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to report whether he thinks the prisoners Sheroo Walee and Jafer Soojat objects of public distrust only because they have been convicted of the petty offences reported, and how the second, Jafer Soojat, forfeited his security bond on the 26th of November 1853.

The third prisoner, Mayachund Premchund, against whom no conviction is recorded, is to be discharged, as the Court think the year's imprisonment he has already

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AHMEDABAD.

Precautionary Measures.

undergone, must be considered sufficient retribution for his having been found in bad company.

Further Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate of Ahmedabad has the honour to state, in reference to the 1st paragraph of the extract which accompanied this Precept, that he is respectfully of opinion that the prisoners, Sheroo Walee and Jafer Soojat, have showed themselves to be persons against whom ordinary punishment has failed to operate as a preventive against crime, and that, under these circumstances, they cannot be regarded otherwise than as hardened offenders, and, therefore, objects of public distrust.

The prisoner Mayachund Premchund has been discharged, as directed.

The papers alluded to in the within Precept are herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate having failed to give reasons, as sought for by the Court, for imprisoning these persons, they are to be at once released. The Magistrate has not replied to the inquiry in the extract about Jafer.

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AHMEDABAD.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Reference from the Magistrate of Ahmedabad, J. W. HADOW, on the 4th June 1856, to the Sudder Foujdaree Adawlut, recommending the detention, in Jail, of a prisoner, Gobur Veerajee, for a further period of one year, in default of furnishing security for good conduct.]

[See pages 131 to 136, Vol. III. for previous proceedings in this case.]

Precautionary Measures.

J. W. Hadow, Magistrate.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to request, in conformity to Clause 1st, Section XXVII.

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AHMEDABAD.

Precautionary Measures.

Regulation XII. of 1827, you will have the goodness to obtain the sanction of the Judges of the Sudder Foujdaree Adawlut for the detention, in Jail, of a prisoner, Gobur Veerajee, for a further period of one year, from the date of the completion of the term of imprisonment to which he was adjudged by the Superintendent of Police on the 16th July 1855.

The prisoner, Gobur Veerajee, is a bad character, and had been twice convicted of robbery. He having no fixed place of residence, the Superintendent of Police required him to furnish security for good conduct in the sum of Rs. 100, for two years, which he failed to do, and was therefore imprisoned.

The papers in the prisoner's case are herewith forwarded.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to report more particularly the occasion on which the prisoner was called upon to give security on 16th July 1855.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In conformity to the directions conveyed in the extract of the Court's proceedings which accompanied this Precept, the Magistrate of Ahmedabad has the honour to report that the prisoner is a Kolie by caste, and has on more than one occasion been imprisoned. On being questioned by the Police as to the place of his residence, he first stated it to be the village of Modhasuna, in the Purantej Purgunna, and afterwards the village of Waruj. On inquiry at the latter place, it was reported that he had not resided, or been at that place for the last four years. The Superintendent of Police, considering this contradictory statement, and the prisoner's bad character, deemed it advisable to call upon him to furnish security, as reported in the Magistrate's letter of the 4th instant.

Papers are herewith returned, as directed.

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Precautionary Measures.

Further Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to report the dates of the former sentences, their duration, and for what crimes they were passed.

Further Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate of Ahmedabad has the honour to report, in reference to the extract of the Court's proceedings which accompanied this Precept, that, on the 16th February 1854, the prisoner Gobur Veerajee was convicted of theft, and sentenced, by the Duskrohee Police Amuldar, to suffer fifteen days' imprisonment. On the second occasion he was taken into custody on suspicion of having committed a robbery, but he was discharged for want of proof. He was, however, bound over by recognisance in the sum of Rs. 100, to be of good behaviour for the space of two years.

On the 30th September 1854, he was convicted of robbery, and sentenced, in reference to the above recognisance bond, to pay a fine of Rs. 100, or, in default, to suffer two years' imprisonment. He was unable to pay the fine, and was therefore imprisoned.

He was released on the 15th February 1855, in conformity to the instructions conveyed in the extract of the Sudder Foujdaree Adawlut's proceedings of the 31st January 1855.

In further illustration of the prisoner's conduct, the Magistrate would beg respectfully to refer to his return, dated 10th January 1855, to the Court's Precept of the 22nd November 1854, No. 848.

The papers and proceedings alluded to in the within Precept, are herewith returned, as directed.

Further Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate was requested, on the 19th June last, to report the occasion on which this prisoner was called upon to give security on

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AHMEDABAD.

Precautionary Measures.

16th July 1855, this report showing no dates, this omission was required to be corrected on the 9th July 1856.

It now appears this prisoner has already once been discharged on the 15th February 1855, by order of the Sudder Foujdaree Adawlut, when confined by the Magistrate on a security bond.

The Magistrate must now be called upon to state what this prisoner has done since his release on the 15th February 1855, to justify his again incarcerating him, and also to afford explanation why he made no allusion, in reporting on the case, until his last return, to the former proceedings held, but quoted the causes of suspicion that were alleged, and rejected as insufficient for the prisoner's former imprisonment, as the ground for the present.

Further Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In conformity to the instructions conveyed in the last paragraph of the extract of the Court's proceedings which accompanied this Precept, the Magistrate of Ahmedabad has the honour to report that the prisoner Gobur Veerajee has done nothing since his release on the 15th February 1855. On being questioned by the Police, he gave a contradictory statement as regards the place of his residence, and the Superintendent of Police, considering the prisoner's previous conviction and sentence, thought it necessary to call upon him to furnish security to be of good conduct for the space of two years; failing to furnish this security, he was incarcerated.

As regards the omission noticed by the Judges in the concluding part of the extract from the proceedings of the Court, the Magistrate begs respectfully to explain that it was owing to an oversight on the part of his Establishment; the Judges could not, the Magistrate presumes to hope, have supposed that, as far as the Magistrate is concerned, it was otherwise than accidental.

The papers are herewith returned, as requested.

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Resolution of the Sudder Foujdaree Adawlut.—The prisoner has already been imprisoned for one year, for having, on the Magistrate's showing, prevaricated as to his residence. He is to be at once released.

1856 October 1.

Present, { William Edward Frere, William Henry Harrison, } Puisne Judges.

Surat.

[Reference from the Magistrate of Surat, H. Liddell, on the 21st August 1856, to the Sudder Foujdaree Adawlut, recommending the further detention, in Jail, of the prisoner Azum Walee, for two months and twenty days, in default of furnishing security for good conduct.]

Precautionary Measures.

H. Liddell, Magistrate.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—In accordance with the provisions of Clause 1st, Section XXVII. of Regulation XII. of 1827, I have the honour to report that, under instructions of the Sudder Foujdaree Adawlut,* received through the Session Judge, with his letter No. 1661, dated the 25th November 1854, the prisoner, Azum Walee, was directed, on the 1st December 1854, to furnish two securities for good conduct for the period of two years, and in obedience to my orders he furnished the required number of securities, of whom one died and the other got his bond cancelled; consequently, under date the 11th September 1855, on his failure to furnish renewed securities, he (the prisoner Azum Walee) was sent to the Jail, for confinement, for the remaining period of one year, two months, and twenty days, without labour.

As the period of one year, for which the Magistrate is authorised to confine the prisoner, expires on the 11th September 1856, I have to request the favour of your obtaining the sanction of the Court for the further detention of the prisoner Azum Walee for two months and twenty days.

* Vide Morris' Reports, Vol. II. page 641, November 1854.

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SURAT.

Precautionary Measures.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to inform the Court whether there is any other reason why the prisoner should be detained in Jail for two months and twenty days, besides that he was required to find security for two years, and did not.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning this Precept, duly executed, the Magistrate of Surat has the honour to report that there is no other reason whatever than that specified in his letter No. 367, dated the 21st August 1856, for the further detention of the prisoner Azum Walee in the Jail.

Resolution of the Sudder Foujdaree Adawlut.—The Court do not consider it necessary that the prisoner should be detained for the further two months and twenty days, and therefore direct his discharge if still in custody.

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SHOLAPORE.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Petition of Wamun Jeewajee, and two others, to the Sudder Foujdaree Adawlut. Referred to the Session Judge of Sholapore, T. A. COMPTON, for Report, on the 14th May 1856.]

[See pages 848 to 850, Vol. V., and pages 192, 193, and 295, Vol. VI., for previous proceedings in this case.]

Petition against the Proceedings of a Session Judge.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut, of the 4th September 1856. —The Session Judge has the honour to state, for the information of the Judges, with reference to the extract from the Court's proceedings of the 4th instant, that, when the petitioners learnt that their conduct was to be investigated by the Magisterial Department, two of them, viz. Wamun Jewajee, and the Treasurer's son Dajee Anunt, absconded for the second time from Sholapore,—a consciousness of innocence is hardly to be inferred from this.

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SHOLAPORE.

Petition against the Proceedings of a Session Judge.

The Session Judge begs respectfully to observe that he was merely endeavouring to explain, that if he acted, or rather intended to act, contrary to law, he was not aware of it—the error was not intentional. He is not aware of any Regulation or Circular forbidding a Session Judge from re-trying prisoners (*handed up by him*) who may have been, *in his opinion*, improperly acquitted by the Magisterial Department; and it is in his recollection that Assistant Magistrates were formerly always prohibited from employing the word "acquitted," on the ground that it would militate against a second prosecution in the event of further evidence being forthcoming.

Resolution of the Sudder Foujdaree Adawlut.—The Session Judge is to be informed, with reference to the first paragraph of his return, that a consciousness of guilt is not the only motive which might induce men to abscond from an inquiry into their conduct; and, with regard to the second paragraph, that the Court are not aware that handing up a prisoner gives the Session Judge any more power over him than over any other; and that the order not to use the word "acquit" in disposing of criminal cases, was intended to apply only to those cases beyond the Magistrate's jurisdiction, not to petty cases such as those the Deputy Magistrate of Sholapore disposed of.

1856 October 1.

AHMEDNUGGUR.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Petitions of Vitoo wulud Yess Patel and six others to the Sudder Foujdaree Adawlut. Referred to the Session Judge of Ahmednuggur, J. W. WOODCOCK, for Report, on the 4th September 1856.]

Serious Assault.

J. W. Woodcock, Session Judge.

Prisoners.—Vitoo wulud Yess Patel, and six others.

Charge.—Serious Assault.

Sentence by the Session Judge.—Prisoners Nos. 1 to 4 each to be imprisoned and kept to hard labour for four

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AHMEDNUGGUR.

Serious Assault.

(4) years, and, at the expiration of one (1) month from the date of imprisonment, each to receive twenty-five (25) lashes on his bare back; and Nos. 5 to 7 each to be imprisoned and kept to hard labour for two (2) years, and, at the expiration of one (1) month from the date of sentence, each to receive fifteen (15) lashes on his bare back; and, on their release, all the prisoners to be made over to the Magistrate for precautionary measures.

Petition of Vitoo wulud Yess Patel to the Sudder Foujdaree Adawlut.—[Praying that the sentence passed against them might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge with regard to the petition of Vitoo.—The Session Judge is to be requested to report whether there are two Razapoors, and, if so, whether there may be any reason to suppose that the evidence as to the *alibi* may have been taken with reference to the wrong one.

[The petitions of the other prisoners were rejected.]

Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The extract has been duly received; and in exigence thereof, the Session Judge begs to report that there are not two Razapoors, but only one, of which two divisions are made, called the Upper and the Lower Razapoor. These are situate within a distance of a gunshot from each other, or the voice of a person calling out loudly may be heard from this to that side. Besides, the prisoner did not adduce any evidence to show that he was in any other place than that where the quarrel occurred.

The petition is herewith returned, as directed.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

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Present, { William Edward Frere, William Henry Harrison, } Puisne Judges.

Khandeish.

[Notice issued by the Magistrate of Khandeish, S. Mansfield, and referred by that Officer to the Sudder Foujdaree Adawlut on the 19th September 1856.]

Notice by the Magistrate.

Notice is hereby given, for general information, that it is highly expedient to abolish the cruel practice of swinging by the hook, and the Magistrate of Khandeish forbids any person being swung by the hook at the ensuing fair held in the month of Chuitru, at Moujé Dewpoor, Talooka Dhoolia; and any one found guilty of disobeying these orders will be dealt with according to law.

The Poojanees, &c. of the Devee, if found encouraging, instigating, or aiding the people to swing by the hook, shall be prosecuted for disobeying the orders of the Magistrate.

By the abolition of the above practice, it is not to be supposed that Government wishes to interfere with the religious rites of the people; but as the Hindoo Shasters do not sanction this practice, it must be discontinued after this Notice.

Agreeably to the provisions of Regulation XII. of 1827, Section XIX. Clause 1st, this Notice is submitted for the approval of the Judges of the Sudder Foujdaree Adawlut.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the approval of the Judges of the Sudder Foujdaree Adawlut, a copy, with translation in English, of a Notice issued by me to the public, forbidding the practice of swinging by the hook, in reference to the Government Circular No. 2974.

Resolution of the Sudder Foujdaree Adawlut.—May be recorded.

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KHANDEISH.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Notice issued by the Magistrate of Khandeish, S. MANSFIELD, and referred by that Officer to the Sudder Foujdaree Adawlut on the 18th July 1856].

Notice by the Magistrate.

Translation of a Notice.—Whereas it has been found that the roads and lanes of the village of ——— are not kept in a cleanly state, accumulations of filth, &c. exist everywhere, and combustible matters are kept up in places exposed to danger, and many other objectionable practices prevail, so as to cause nuisance and damages to the public, and, though accidents do actually take place, yet the people show no disposition to abandon their practices: therefore, with the view of preventing these, the following Rules are made, agreeably to Regulation XII. of 1827, Section XIX., for the information and guidance of those concerned:—

Every occupant of a house must clean, daily, the road in front of his house, and keep it free from the filthy water of the drains coming on the road at all.

Every occupant of a house must make side-gutters along the road opposite his house to the depth of one cubit, in order that the rain-water may not make the road muddy; everybody must clear out his gutters every four or five months, so as they should appear distinct.

No person shall ease himself on the road, or permit children to do so; every one must resort to a deserted place at a distance to obey the calls of nature, or to a place out of the village which is not much frequented by the public; or must use such a place for that purpose as the Police Amuldar may point out.

No person shall, without the permission (of the Magistrate), build steps, verandahs, 'otas,' &c. to the impediment of the public thoroughfares, and if such buildings

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KHANDEISH.

Notice by the Magistrate.

are erected, they will be at once removed, and the Magistrate will not listen to any excuse whatever.

No person shall keep hay or other combustible matter on the premises, or in a place situated so as to be liable to accidents.

No person shall erect new hay 'chuppers' adjoining or between large expensive buildings, for such chuppers, if fired, will cause heavy and serious loss of property; and therefore, to guard against these, a place of security, as the Police Amuldar may point out, may be made use of for new chuppers, if any must be erected; those that already exist will not be removed by compulsory measures, but care must be taken in future cases.

No corpse of an animal shall be allowed to lie on the road, or by the side of the road; the Mhars should be made to remove it to such a distance as the public will not be annoyed.

No person shall make accumulation of filth, &c. near his house likely to cause nuisance to others.

Where there is a river, no person shall spoil its water by using it for washing, dyeing, &c. at the point where people resort to take drinking water; and the same rule should be observed with reference to wells with steps, as well as those without steps.

This Notice shall have its effect from ——— ; and it is hereby notified, that any infringement of the rules laid down above will be treated as an offence and breach of the Magistrate's Order, agreeably to the Regulations.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the approval of the Judges of the Sudder Foujdaree Adawlut, a copy, with translation in English, of a Notice issued by me to the villagers in this Zillah, regarding the cleanliness of villages, &c.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—These being general rules, the Magistrate had

better publish them without the last paragraph, and, if he finds that they are disregarded, he had better publish such parts of them as relate to the particular village or town in it with the last paragraph, and send that Proclamation down for approval. There are parts of this not applicable to every village, and I had rather not sanction so general a Proclamation: it is too much like laying a trap.

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Minute by Mr. Harrison.—I would record this Proclamation.

W. H. Harrison, Puisne Judge.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge.

Minute by Mr. Keays.—I concur with the view taken of this Proclamation by Mr. Frere.

R. Keays, Puisne Judge.

Resolution of the Sudder Foujdaree Adawlut.—[In accordance with Mr. Frere's minute.]

Return by the Magistrate to a Precept of the Sudder Foujdaree Adawlut.—In return to the foregoing Precept, the Magistrate begs to observe that he is at a loss to know how, if the last paragraph of the Notice be omitted, compliance with the requirements of its preceding paragraphs can be enforced, or how their infringement can be visited; when the people know there is no fear of retribution, the Notice will soon become a dead letter.

The only part of the Notice which cannot be made applicable to every village appears to the Magistrate to be the 9th paragraph, which has reference to rivers; all the other parts are applicable to every village.

With this view, the Magistrate begs to submit copies, with translations, of two distinct Notices, one with, and the other without the provision respecting rivers, and trusts they may meet with the approval of the Judges.

If the course pointed out by the Judges in the extract of the Court's proceedings of the 13th instant were to be followed, the Magistrate fears there would be no end of references.

Further Translation of a Notice.—Whereas, it has

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been found that the roads and lanes of the village of ——— are not kept in a cleanly state, that accumulations of filth, &c. exist everywhere, and combustible matters are kept in places exposed to danger, and many other objectionable practices prevail, so as to cause nuisance and damages to the public, and, though accidents do actually take place, yet the people show no disposition to abandon their bad habits: therefore, with the view of improving the state of the village, the following rules are made, agreeably to Regulation XII. of 1827, Section XIX., for the information and guidance of those concerned:—

Every occupant of a house must clean, daily, the road in front of his house, and keep it free from the filthy water of the drains.

Every occupant of a house must make side-gutters along the road opposite his house, to the depth of one cubit, in order that the rain water may not stagnate and make the road muddy; everybody must clear out his gutters every four or five months, so as they should appear distinct.

No person shall ease himself on the road, or permit children to do so; every one must resort to a deserted place at a distance to obey the calls of nature, or to a place out of the village which is not much frequented by the public, or must use such a place for that purpose as the Police Amuldar may point out.

No person shall, without the permission (of the Magistrate), build steps, verandahs, otas, &c. to the impediment of the public thoroughfares, and if such buildings are erected, they will be at once removed, and the Magistrate will not listen to any excuse whatever.

No person shall keep hay or other combustible matter on the premises, or in a place situated so as to be liable to accidents by fire.

No person shall erect new grass chuppers adjoining, or

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between large and expensive buildings, for such chuppers, if fired, would cause heavy and serious loss of property; and therefore, to guard against such accidents, a place of security, as the Police Amuldar may point out, must be made use of; those that already exist will not be removed by compulsory measures, but care must be taken in futnre cases.

No dead carcase of an animal shall be allowed to lie on the road, or by the side of the road; the Mhars should be made to remove it to such a distance as that the public will not be annoyed by it.

No person shall make any accumulation of filth, &c. near his house, likely to cause nuisance to others.

Whereas there is a river, no person shall spoil the water by using it for washing, dyeing, &c. at the point where people resort to take drinking water; and the same rule should be observed with reference to wells with steps, as well as those without steps.

This Notice shall have effect from ———; and it is hereby notified, that any infringement of the rules laid down above, will be treated as an offence of breach of the Magistrate's orders, agreeably to the Regulations.

Translation of second Notice.—Whereas it has been found that the roads and lanes of the village of ——— are not kept in a cleanly state, that accumulations of filth, &c. exist everywhere, and combustible matters are kept in places exposed to danger, and many other objectionable practices prevail, so as to cause nuisance and damages to the public; and, though accidents do actually take place, yet the people show no disposition to abandon their bad habits: therefore, with the view of improving the state of the village, the following rules are made, agreeably to Regulation XII. of 1827, Section XIX., for the information and guidance of those concerned:—

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No person shall erect new grass chuppers adjoining or between large and expensive buildings, for such chuppers, if fired, would cause heavy and serious loss of property; and therefore, to guard against such accidents, a place of security, as the Police Amuldar may point out, must be made use of; those that already exist will not be removed by compulsory measures, but care must he taken in future cases.

No dead carcase of an animal shall be allowed to lie on the road, or by the side of the road; the Mhars should be made to remove it to such a distance as that the public will not be annoyed by it.

No person shall make any accumulation of filth, &c. near his house, likely to cause nuisance to others.

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1856 October 1. KHANDEISH. Notice by the Magistrate.

This Notice shall have effect from ————, and it is hereby notified that any infringement of the rules laid down above will be treated as an offence of breach of the Magistrate's orders, agreeably to the Regulations.

Resolution of the Sudder Foujdaree Adawlut.—These may be recorded; Mr. Frere, however, is of opinion that it would be better that the Magistrate should act according to the instructions communicated to him under date 13th August.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 137 of the Calendar of the Ahmedabad Sessions Court for 1855. Committed by the Third Assistant Magistrate, H. B. LINDSAY, on the 19th December 1854. Tried by the Acting Assistant Session Judge, C. WALTER, on the 20th January 1855. Proceedings submitted on the requisition of the Sudder Foujdaree Adawlut, on the petition of the prisoner Masook Bhugwan.]

Robbery, with Force, by Day, and knowingly Receiving Stolen Property; and Instigating and Aiding in the said Robbery, and also with Concealing the same.

Prisoners.—No. 1, Masook Bhugwan, Brahmin, aged 20.
2, Moolia Bechur, Koonbee, aged 22.
3, Jumna Dya, Koonbee, aged 21.
4, Khooshal Kewul, Brahmin, aged 17.
5, Jumnee, wife of Kewul Nursé, Lowar, aged 30.

Charge.—Against prisoners Nos. 1, 2, and 3, robbery, with force, by day, and with knowingly receiving stolen property, and Nos. 4 and 5 with instigating and aiding in the said robbery, and also with concealing the same.

C. Walter, Acting Assistant Session Judge.

Finding and Sentence by the Sessions Court.—Prisoners Nos. 1, 2, and 3 are convicted of robbery, with force, by day, and sentenced to be each imprisoned and kept to hard labour for the space of two (2) years. (Regulation XIV. of 1827, Section XXXVII. Clause 3rd.)

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No. 4, acquitted and discharged.

No. 5, acquitted and discharged in the course of the investigation on the 19th instant.

In the defence, prisoner No. 1 (Masook) adheres to his original statement, made on the 29th, the day before his confession, that he and the other two, Moolia and Jumna, witnessed Ishvur Purbhoodas commit the robbery at night, with the aid of Khooshal (prisoner No. 4). The statements made by Moolia and Jumna were identical with his, and it is clear that, on making them, they were let loose on their promise of showing up part of the stolen property, and that they did show it in Ishvur's house. This confirms what the Court has noted above, viz. its conviction, that the property was placed there either by their own or other hands, but with the knowledge of one or other of them, within the period that they were at large; for, if not, what was the necessity for their temporary release, for the same suspicion which they on their return entertained, of property being in Ishvur's house, they must otherwise have had when still in custody, and, if so, what was the reason for their not mentioning it to the Foujdar? Then, again, this statement was first made by them after they had been named as the thieves by Jumnee, and it appears to have been made because it was necessary for them, having been thus pointed out as the thieves, to shift the guilt on some one else. Ishvur having been once accused by them, the finding of the property in his house was a part of their plan. The idea of Ishvur's guilt was scouted by the Police from the first—he was not even apprehended; and then, their plan having failed, and they having committed themselves by an admission of having been present at the robbery, and of knowing the locality of a portion of the spoil, they stood detected, and, besides *boná fide* showing up the stolen property, confessed the next day. Prisoners Nos. 1 and 2 both adhere to their

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first statement. Both before the Assistant Magistrate and before the Court both assert that their confessions were extorted, and Masook actually asserts that his arm was broken from ill-usage he received. He said, before the Assistant Magistrate, that no one was present when he was thus ill-used. Before the Court, he has, with his petition, advanced a long list of witnesses to prove what he before declared himself unable to do. Those that were present have been taken. The Court disbelieves that the prisoner met with the injury at the hands of the Police, when it is said he did, for several reasons: first, that the witnesses to the confession of the 30th (who are not Police) make no mention of it, and one distinctly deposes that he was then uninjured; again, a man with such undeniable marks of violence, received from the Police, would not have allowed a confession of his to be taken down, and have signed it, and had it attested in open Kutcherree immediately afterwards; lastly, the Foujdar is not said to have connived at the ill-usage personally, the Peons are said to have taken the opportunity of his absence. If so, he would not, for their sake, have risked his position and character by concealing and taking no notice of it; and if the prisoner had really received the injury he says he did at their hands, and have mentioned it to him either on the 30th or at any other time, he would not have failed to have recorded the fact on his Duftur, and have investigated the matter in full. But no mention of the matter was made until the case went before the Assistant Magistrate, who has himself not noticed the matter in his proceedings.

The Court considers that the real truth should, for the credit of the Police, be, if possible, brought to light. Copies of the petition, and list of witnesses, named by prisoner Masook, will, therefore, be forwarded to the Magistrate, as well as copies of depositions taken in this Court, bearing on the point as affecting the credit of the

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H. Newton, Acting Session Judge.

department. The Court considers it a matter for stringent investigation there, but sees no reason to differ from the view it has taken of the genuineness and truth of the confessions.

Proceedings by the Acting Session Judge.—The Acting Session Judge considers the charge established against the prisoners, on their admissions before the Sessions Court, the evidence of Jumnee, and such circumstances as the pointing out of some of the property by the first prisoner, and the pawning of another portion by the others; and while, on the one hand, it therefore becomes unnecessary to use their retracted confessions against them, the case, on the other hand, would remain unaffected if they were able to prove that they had been the subjects of violence to any extent when in the custody of the Police. The inquiry thus becoming a matter affecting the character of the Police Authorities only, it is most necessary that this Court should restrict itself to the reception of such evidence only as is material to cases before it, and not leave its own province to take up investigations which belong to that of the Magistrate.

It is noticed that, though the prisoner Masook complained before the Assistant Magistrate that his arm had been broken by the Peon Phujoo, he expressly stated that no one was present at the time, and that he had no witnesses to call; so that the twenty-seven witnesses, whom he wished to call before the Sessions Court, were mentioned for the first time but nine days short of two months after his first statements were taken. The case is, therefore, one to which the provisions of Regulation XIII. of 1827, Section XXI. Clause 2nd, especially apply. These witnesses appear also to be called to prove the use of violence by the Police in cases not connected with the present, and other particulars irrelevant to the present inquiry.

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The Acting Session Judge, for the above reasons, while holding inquiry as to the alleged ill-treatment of the prisoners Nos. 1 and 2, irrelevant to the present inquiry, and not within the province of the Sessions Court, determines to forward extract from the proceedings, for the information of the Magistrate. That the arm of the prisoner Masook was broken is not proved, since the Civil Surgeon does not appear to have returned any answer to the reference on the subject made to him by the Acting Assistant Session Judge; and the latter Officer, when recording in his finding "that a man with such undeniable marks of violence," &c., may merely have meant that if the prisoner had such undeniable marks, as a broken arm, he would not have allowed a confession to have been taken down and signed by him in open Kutcherree; it appears, however, most desirable, that the conduct of the Police Peon or Peons should be sifted, if an inquiry has not already taken place.

The release of the prisoners, on oral security, in order that they might go where they liked, unobserved, in Suruspoor, and give up the stolen property, though seriously militating against the supposition that violence was offered to them, and though it has doubtless resulted in adding to the evidence against them, appears to the Acting Session Judge a questionable proceeding. It is unauthorised by Regulation, and, perhaps, gives occasion for complaints, like the present, of ill-treatment by the Police. Unless it could be found that Masook's arm was really broken, or exhibited marks of violence, the Assistant Magistrate cannot be censured for making no inquiry into the alleged ill-treatment, since the prisoner Masook expressly stated that he had no witnesses to it. The Acting Session Judge wishes, however, that he had left some remark on record to show whether there was any ground for supposing that the prisoner's arm was then broken, as alleged at the time.

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The Acting Session Judge wrote to the Magistrate on the 28th March last, requesting information as to the result of any investigation respecting the complaint of prisoner (Masook), should any have been made; but no answer has been received, and as the result of the reference will not affect the case, it is not kept open longer on this account.

Petition of Masook Bhugwan to the Sudder Foujdaree Adawlut.—[Representing that he was tried with others for robbery, with force, by day, and sentenced to hard labour for the space of two years; that the charge was false, and got up against them, and that they had been subjected to violent treatment by the Police; and praying, therefore, that the papers might be called for, and his sentence annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—You are hereby requested to submit a detailed report upon the matter set forth in the accompanying petition from Masook Bhugwan, a convict in the Ahmedabad Jail, which accompanied the Register of Petitions handed up by your Assistant on the 14th instant, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The Session Judge begs to refer the Judges of the Sudder Foujdaree Adawlut to the accompanying copies of extracts from the Assistant Session Judge's proceedings, and that of the late Acting Session Judge, as they will furnish information on the important points adverted to in the petition herewith returned.

One of the accomplices of the petitioner, Jumna Dya,

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appealed to the Court in November last, but his petition was rejected under date the 12th December 1855.

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—The Session Judge is to be requested to certify the Magistrate's report as to the misconduct imputed to the Police, and, if none has been made, to call upon him to furnish it, for the Court's information.

Letter from the Magistrate to the Session Judge.—In reply to your letter No. 280, dated 14th instant, requesting my report as to the misconduct imputed to the Police by the petitioner Masook Bhugwan, I have the honour to state, that on the receipt of the Assistant Session Judge's letter therein alluded to, I had requested my Third Assistant, Mr. Lindsay, to inquire and report on the ill-usage by the Police complained of by the petitioner.

Mr. Lindsay reported to me that, of the twenty-seven witnesses named by the petitioner, he had only been able to obtain the evidence of eighteen, of whom three, who are related to the petitioner, and a fourth, who is his neighbour, deposed to their having seen the Sepoys seize and hold him, while one of the Sepoys beat him until his arm was broken; and that thirteen witnesses declared that they knew nothing about the matter, or spoke from hearsay; and the remaining one, a barber, deposed to having dressed the petitioner's arm, which was only bruised; but he knew nothing as to how the bruise was received. Mr. Lindsay was therefore of opinion that the charge against the Police was false, and groundless, and also remarked that, when he was trying the petitioner and his comrades for robbery, which lasted several days, the petitioner stated nothing whatever on the subject, until his deposition had been completely taken, when, on being asked if he had anything more to say, he stated that the Peon Phujoo *alone* had beaten him, but had no witness to prove it. Afterwards he called a number of witnesses, of whom two-thirds had been examined.

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I however requested Mr. Lindsay to report the measures taken to procure the attendance of the remaining witnesses, and, on the attendance of these witnesses, to take their evidence, and report the result as far as it may affect the charge brought against the Police.

In reply, Mr. Lindsay informed me that the remaining witnesses, except one, who could not be found, had been examined; but that he could come to no other conclusion than that recorded in his former report, that the charge was false and malicious.

Not being fully satisfied myself with the inquiries reported on by Mr. Lindsay, I suggested to this Officer that it would be more satisfactory, were the Police, who had been accused of misconduct, placed on their trial, and a formal decision recorded on the evidence adduced by the petitioner. The accused were accordingly placed on their trial, but were discharged for want of proof, and for the reasons set forth in the finding of the Third Assistant Magistrate's proceedings, copy of which I beg to append.

I had called for and reviewed the proceedings on an appeal from the petitioner, and, after mature consideration, informed him that I saw no reason to interfere with the decision passed in this case.

The accompaniment to your letter under reply is herewith returned.

H. B. Lindsay, Third Assistant Magistrate.

Proceedings by the Third Assistant Magistrate.—In this case the prisoners are charged with abuse of authority in their capacity as Police Officers, and plead not guilty. There is the strongest reason for believing that this charge, brought against them by Masook Bhugwan, is false and unfounded, because, when Masook was first brought up before the Assistant Magistrate, on the charge of robbery, he never made any complaint, until after his statement had been recorded. He then declared that the Police had beaten him, and broken his arm, but stated

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that he had no witnesses to call. Before the Session Judge he called twenty-seven witnesses to prove the beating; of these, all except six deny that they knew anything about the affair, and four out of the six are relatives of Masook or his fellow-prisoners in the robbery case. Moreover, in the accounts given by these six witnesses there are such glaring discrepancies as to time and circumstances, that no reliance can be placed upon their assertions. The charge, therefore, is not considered proved against the prisoners, who are discharged for want of proof.

Confirmation by the Magistrate.—The Magistrate sees no reason to interfere with the decision passed in this case, and the petitioner, Masook Bhugwan, is to be informed accordingly.

Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The report of the Magistrate, called for in the extract that accompanied this Precept, is herewith certified to the Court of Sudder Foujdaree Adawlut.

The petition is also herewith returned.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to certify the papers and proceedings, and to report the circumstances under which the prisoner was sent to the Civil Hospital, and whether his arm was broken, as alleged.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In compliance with the instructions conveyed in the extract of the proceedings which accompanied this Precept, the Magistrate has the honour in certifying the papers and proceedings therein called for, and to report that the prisoner was sent to the Civil Hospital by the Assistant Session Judge after the case had been committed for trial before the Sessions Court.

As regards the question whether the prisoner's arm

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was broken, as alleged, the Magistrate begs to append copy of a letter from the Civil Surgeon, No. 50,* dated 2nd instant, from which the Judges will perceive that he was only suffering from a slight contusion of the wrist, and discharged after three days' treatment.

The petition is herewith returned, as requested.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause to interfere, and reject the petition.

* *Letter from the Civil Surgeon to the Magistrate.*—In reply to your letter of 30th ultimo, I have the honour to state that the only information I am in possession of regarding Masook Bhugwan, the person referred to in Mr. Walter's letter, is that he was admitted in the Civil Hospital on December 30th, 1854, suffering from a slight contusion of the wrist, and discharged, after three days' treatment, on January 2nd.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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KAIRA.

[Case No. 148 of the Calendar of the Ahmedabad Sessions Court for 1855. Committed by the Deputy Magistrate of Kaira, W. F. A. SPRY, on the 12th December 1855. Tried by the Session Judge, B. WARDEN, on the 20th and 28th June 1856. Proceedings submitted to the Sudder Foujdaree Adawlut on the petition of the prisoner.]

Prisoner.—Ujoo Parshung, Kolee, aged 22.

Culpable Homicide.

Charge.—Wilful murder; in having, on or about Sunday, May 20th, 1856, (corresponding with Jésht Shood 4th, Sumvut 1911,) in the daytime, in the limits of Kareeavee Village, Neriad Talooka, Kaira Zillah, during an affray which took place about cutting a drain, beaten with bludgeons Jeysing Dajee, and inflicted injuries, from the effects of which the said Jeysing died on the 22nd of May 1856, prisoner thereby rendering himself amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with wilful murder; in having, during an affray, beaten with sticks Jeysing Dajee, and inflicted injuries, from the effects of which the said Jeysing died. From the Inquest Report (No. 6), which has been proved by the witnesses Nos. 4 and 5 (Parsing and Bhaeejee), it is proved that the death of the deceased was owing to injuries inflicted with a stick. From the evidence of Meroo (witness No. 7) it has been proved, that while he and his brother, the deceased Jeysing, were at work in a field, a quarrel took place in the adjoining field between Nara Jaiah and the prisoner and the prisoner's father, who is since dead (vide Exhibits Nos. 2 and 3); and that his brother Jeysing, in attempting to separate the belligerents, was assaulted by prisoner and his father, and died on the third day from the effects of a blow from a stick on

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the skull, which was inflicted by prisoner. The evidence of the witnesses Nos. 8 and 9 (Ruttna and Nara) tallies with that of the witness Meroo; but there are additional facts elicited from the evidence of these witnesses, viz. that they were repairing a watercourse, when Nara's brother and nephew (the father of prisoner, and prisoner himself), came up to them, and tried to prevent their doing so, but they would not give in; therefore the prisoner and his father assaulted Nara with sticks which were in their hands; that the deceased Jeysing, who was a relative of the belligerents, came from an adjoining field, and attempted to interfere, on which the prisoner and his father turned upon Jeysing and assaulted him; and Jeysing, in self-defence, picked up a stick that was on the ground, and laid about him, and the affray ended in Jeysing and the father of the prisoner being both floored, Jeysing having in the fight received a blow on the skull, became insensible, and died three days afterwards from the effects thereof. The prisoner admits that the cause of the quarrel was the watercourse, and that he and his father remonstrated with Nara for making it; but he wishes to make out that the assailants were Nara, the deceased Jeysing, witness Meroo, &c. He, however, has no witnesses to support his assertion, and cannot account for the injuries received by Jeysing. The Court, upon due consideration of the above facts, considers it proved that the affray was commenced by prisoner and his father. The question, therefore, is whether the prisoner is guilty of wilful murder or not. If the prisoner assaulted his uncle Nara with the intent to deprive him of life, and, without intending it, killed Jeysing instead of Nara, he is equally guilty; but from the evidence of Nara and his wife, it is quite clear that the attack made on them was not premeditated by prisoner and his father, but in the heat of the moment, owing to Nara and his wife not desisting from making the watercourse,

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they proceeded from words to blows, and on Jeysing interfering, struck him. In cases of this kind it is necessary to take into consideration the nature of the weapon used. Now, the weapon used was a thick stick or cudgel, and it does not appear that it was used with intent to kill; and as there was no malice prepense, the Court is of opinion that the offence committed by prisoner is divested of that degree of criminality which constitutes wilful murder, and therefore finds him guilty of culpable homicide; in having, on or about Friday, May 20th, 1856, (corresponding with Jésht Shood 4th, Sumvut 1911,) in the daytime, in the limits of Kareeavee Village, Neriad Talooka, Kaira Zillah, during an affray which took place about the cutting of the drain or water-course.*

After taking into consideration the nature of the offence proved against you, prisoner Ujoo Parshung, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVII. of 1827, to which you have rendered yourself amenable, the sentence of the Court is that you be imprisoned, and kept to hard labour, for five (5) years.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The conviction is correct, but the sentence seems to me too severe. The sticks with which the fatal assault was committed were not before the Court. But it does not appear from the evidence that they were other than those ordinarily used; and no premeditation appearing, I would reduce the sentence to two years' imprisonment. The nature of the wounds is not set forth in the Inquest Report, as it ought to have been.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—I concur in the conviction, but I think the sentence is too severe, and concur with Mr. Harrison that imprisonment, with hard labour, for two years, will meet the case.

* An omission here.—*Compiler.*

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Resolution of the Sudder Foujdaree Adawlut.—The sentence is reduced to two years' imprisonment, with hard labour.

1856
October 9.

Belgaum.

Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

[Case No. 67 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Second Assistant Magistrate of Belgaum, C. F. H. Shaw, on the 12th May 1856. Tried by the Session Judge, A. W. Jones, on the 20th, 21st, 23rd, 24th, and 25th June, and 15th, 16th, 18th, and 22nd July 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner Awuna bin Balapa, and three others.]

Culpable Homicide.

Prisoners.—No. 1, Awuna bin Balapa, Hambar, aged 50, and 18 others.

Charge.—Murder (Regulation XIV. A. D. 1827, Section XXVI. Clause 1st); in that they did, on Saturday night, the 22nd March 1856, (corresponding with Falgoon Wud 1st, Shuké 1777,) in the village of Yedoor, in the Chickoree Talooka, in the Belgaum Division of the Dharwar Zillah, armed with sticks and other offensive weapons, purposely, and without justifiable or extenuating cause, deprive of life one Bapoobhaee, by striking him on the head and other parts of the body with the pounder or club now produced, or some such other weapons, in consequence of which the aforesaid Bapoobhaee, on the following Monday, the 24th March, died.

And these prisoners are further charged, together with all the other prisoners at the bar, with riot and breach of peace; in that they, the prisoners, being respectively the followers of Dajee and Bhow Sahebs, Inamdars of the village of Yedoor, with others unknown, being more than twelve in number, did, on the night of Saturday, the 22nd March 1856, (corresponding with Falgoon Wud 1st, Shuké 1777,) riotously assemble and gather

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BELGAUM.

Culpable Homicide.

A. W. Jones, Session Judge.

together to disturb the peace, and being so there and then assembled together, and armed with sticks and other offensive weapons, did commit a breach of the peace by fighting,—the aforesaid Bhow Saheb's dependants against the abovementioned Dajee Saheb's followers.

Finding and Sentence by the Sessions Court.—In this case the prisoners Nos. 1 to 6 are charged with murder, and, together with prisoners Nos. 7 to 24, are charged with riot and breach of the peace, and all plead not guilty.

It appears that the village of Yedoor is held in trust for the temple of Veerbudra, and its affairs managed by two brothers, whose titles, or the names by which they are generally known, are Dajee Saheb and Bhow Saheb. Of these two persons Bhow Saheb is the elder, but, as far as can be judged from the evidence in this case, Dajee Saheb seems to have been up to this year the active manager. About two months before the Holee, however, some dispute occurred between them, on which one brother, Bhow Saheb, went and lived in the Muth, where the disturbance took place, while Dajee Saheb remained in the Wara, or family residence, in the village.

Now it appears that it is the custom on the last day of the Holee, when the idol is brought from the temple to the Churuntya Muth, on the banks of the river, for the Aya of the Muth to distribute cocoanuts first among the attendants of the temple and idol, and then to the Inamdar, the Wutundars, and others of the village.

This year, on the night of Saturday, the 22nd March, after the distribution of the cocoanuts among the attendants of the temple and idol, the Aya of the Churuntya Muth was going to give the cocoanut, as he had done last year, to prisoner No. 7 (Naro Anunt), as the Karkoon of Dajee Saheb, when prisoner No. 24 (Ramajee), the Karkoon of Bhow Saheb, interfered, and desired it should be given to him, and this gave rise to a dispute between them, and while it went on the followers on

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each side appear to have got excited, and to have attacked each other; but with whom the actual fight began it is impossible to say, as each party throws the blame on the other, and there are no persons sufficiently impartial to give satisfactory evidence on the point. The Aya of the Churuntya Muth might probably clear it up if he chose, but he only deposes that each party abused the other, and then the followers on both sides began simultaneously mounting the verandah where the higher authorities were stationed, on which he ran away into the Muth, and saw no more. It appears that of Bhow Saheb's party, exclusive of Bapoobhaee, who died of his wounds, there were six, and of Dajee Saheb's party there were four, who were more or less hurt, so that there is no doubt there was a disturbance and a fight at the Muth. But there is always a large number of persons gathered on these occasions, so that the actual assembly was nothing more than usual; and as it does not appear that either party came armed in such a way as to show they were prepared for a fight, it does not seem to the Session Judge that there is anything to prove that these persons "assembled for riotous purposes," which is essential to bring the crime within the legal meaning of "riot," as appears from the decision of the Judges in the Rutnagherry case, decided on the 3rd January 1855. Under these circumstances, the prisoners must all be acquitted of that charge.

The Assistant Magistrate states that, in his opinion, Dajee Saheb's party are chiefly to blame, because they came armed with sticks and clubs; but they are not shown by any evidence before the Court to have been armed in any numbers more than Bhow Saheb's followers. The Aya of the Muth, with great impartiality, allows that he saw two of each party had slight bamboos in their hands; and the only weapon larger than a small stick among Dajee Saheb's party was the large pound-

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ing club or 'moossul,' which is shown to have been used by prisoner No. 1, and among Bhow Saheb's party the deceased is shown to have had a dagger, and prisoner Kumal admits he carried a sword.

Now it is quite certain that Dajee Saheb's Karkoon, Naro Punt, received the cocoanut last year, and, as it was Bhow Saheb's Karkoon who interfered to alter this on this occasion, the Session Judge is of opinion that Bhow Saheb's party is quite as much to blame in the matter as Dajee Saheb's.

With regard to the charge of murder against the prisoners Nos. 1 to 6, it appears that one Bapoobhaee, of Bhow Saheb's party, was so severely hurt during the fight on Saturday night, that he died on the Monday evening following; and the Report of the Inquest held on his body, which was proved before the Court, shows that he had died of blows on the head and shoulders, inflicted with sticks or clubs.

The evidence against these prisoners is chiefly supplied by three Shetsundees, two of whom went to the Muth at the time of the ceremony, and one on account of hearing the disturbance. They all three depose to having seen prisoners Nos. 1, 2, 3, and 4 (Awuna, Poonya, Eerya, and Anya) beating the deceased with sticks, and that the prisoner No. 1 (Awuna) struck him on the head with the large pounding club before the Court, and that the deceased had a dagger, unsheathed, in his hand, which one of them (the Shetsundees) tried to take away for fear of his using it. (This interference, the Session Judge remarks by the way, appears to have been rather injudicious under the circumstances, as there were already four men against one). But the Session Judge can see no reason to doubt that these witnesses have in the main told the truth. Their evidence was taken within three or four days of the occurrence, and other witnesses (Nos. 8, 9, and 10) depose to having seen

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the prisoners Nos. 1, 2, and 3 beating the deceased, and, though the evidence of these last witnesses was not taken till some time after the disturbance, there is no doubt they were present and could have seen what they depose to, as the Aya of the Muth and the Koolkurnee of the village both depose to having seen them at the assembly on the Saturday night in question. The Session Judge is therefore of opinion that there is sufficient evidence to show that the prisoners Nos. 1, 2, 3, and 4 beat the deceased Bapoobhaee in such a manner as to cause his death.

The defence of these four prisoners is that they were not at the Muth on the night of the disturbance, and their Vakeel offers five witnesses to prove the prisoner No. 1 was ill, and four to prove the prisoner No. 2 was at another place; but they had in their previous statements admitted they had no witnesses to prove their defence, and the Session Judge did not think it necessary to send for witnesses named at the last moment, nor for those named by the prisoner No. 3, to contradict what had been so clearly proved by the witnesses for the prosecution, and prisoner No. 4 in his statement admits he has no witnesses to prove his absence.

The Session Judge, however, is of opinion, that the circumstances under which the death of the deceased occurred, that is, during a quarrel and fight, which arose suddenly, and without premeditation, between two large parties of men, and in which no deadly weapons were used, and the fact that no previous ill-will is even suggested between the prisoners and the deceased, are sufficiently extenuating to divest the act of so much criminality as would constitute murder, and therefore determines to acquit these four prisoners, Nos. 1, 2, 3, and 4, of murder, and convict them of culpable homicide.

As there is no evidence against the prisoners Nos. 5

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and 6, proving they were concerned in beating the deceased, they are acquitted.

The prisoner No. 1 (Awuna), No. 2 (Poonya), No. 3 (Eerya), and No. 4 (Anya,) are convicted of culpable homicide; in that they did, on Saturday night, the 22nd March 1856, (corresponding with Falgoon Wud 1st, Shuké 1777,) in the village of Yedoor, in the Chickoree Talooka, in the Belgaum Division of the Dharwar Zillah, armed with sticks and other offensive weapons, without justifiable or extenuating cause deprive of life one Bapoobhaee, by striking him on the head and other parts of the body with the pounder or club now produced, or some such other weapons, in consequence of which the aforesaid Bapoobhaee, on the following Monday, the 24th March, died.

After considering the nature of the crime committed by the prisoners Awuna, Poonya, Eerya, and Anya, and the punishment assigned thereto in Regulation XIV. A. D. 1827, Section XXVII. Clause 2nd, the following sentence is passed:—

That you, Awuna bin Balapa, be imprisoned, and kept to hard labour, for five (5) years; and that you, Poonya bin Balapa, Eerya bin Suttoo, and Anya bin Awuna, be imprisoned, and kept to hard labour, for three (3) years.

It appears from the deposition of the Joint Police Officer of Chickoree, that after making some inquiries on the spot, he returned to Chickoree, and conducted the rest of the investigation, either there or at Shapoor by sending for the witnesses he wanted. The Session Judge is of opinion, however, that the best plan of getting at the truth in such a case would have been to have carried on the inquiry on the spot, and in the most public manner.

The Session Judge also begs to draw the Magistrate's attention to the manner in which part of this inquiry was

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conducted, as it appears that, in three cases, the deposition of one person of a family was taken and another sent up to the Assistant Magistrate to admit this deposition as his own. ' The depositions of the persons referred to are herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

1856 October 9.

TANNA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 85 of the Calendar of the Konkun Sessions Court for 1855. Committed by the Deputy Magistrate, R. H. SHOWELL, on the 31st August 1855. Tried by the Session Judge, C. M. HARRISON, on the 1st September 1855. Proceedings submitted to the Sudder Foujdaree Adawlut on the petition of the prisoner.]

Robbery by Day, with Force.

Prisoner.—Aiodiah Pursad, *alias* Bhowan Shing wulud Koeelee Pursad, Kunojah Brahmin, Hindoo, aged 23.

Charge.—Robbery by day, with force (Regulation XIV. of 1827, Section XXXVII. Clause 3rd); in having, on Tuesday, the 28th day of August 1855, (corresponding with Mungulwar, Shrawun Wud 1st, Shuké 1777,) at Tanna, in the Salsette Talooka of the Tanna Division of the Konkun Zillah, when in charge of a child named Hureelal, the son of Ambaidas Treecumdas, aged twenty-one months, he being servant of the said Ambaidas, taken the said child into the jungle, and forcibly stolen from off his person gold and silver ornaments, of the estimated value of Rs. 151-8-0, leaving the child alone in the jungle.

The prisoner pleads guilty.

C. M. Harrison, Session Judge.

Finding and Sentence by the Sessions Court.—This is another instance of the life of an unfortunate child having been all but sacrificed to the criminal ostentation of

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TANNA.

Robbery by Day, with Force.

its parents. Had the child not been immediately discovered, it would undoubtedly have perished miserably in the jungle ; and the conduct of its parents in decking it with ornaments, and thus exciting the cupidity of the evil-disposed, whilst they neglected to take the ordinary precautions necessary for the care of so young a child, cannot be too strongly condemned.

The prisoner is convicted of robbery, by day, with force, on his own confession, confirmed after hearing the evidence in the case read over to him ; in having, on Tuesday, the 28th day of August 1855, (corresponding with Mungulwar, Shrawun Wud 1st, Shuké 1777,) at Tanna, in the Salsette Talooka of the Tanna Division of the Konkun Zillah, when in charge of a child named Hureelal, the son of Ambaidas Treecumdas, aged twenty-one months, he being servant of the said Ambaidas, taken the said child into the jungle, and forcibly stolen from off his person gold and silver ornaments of the estimated value of Rs. 151-8-0, leaving the child alone in the jungle.

And after maturely considering the nature of the offence committed, and the punishment provided for the same by Clause 3rd, Section XXXVII. Regulation XIV. of 1827, the following sentence is passed :—

That you, Aiodiah Pursad, *alias* Bhowan Shing wulud Koeelee, be imprisoned for five (5) years, of which eleven (11) months of each year are to be with hard labour, and one (1) month solitary; and that you receive fifty (50) stripes on your bare back, with a cat-o'-nine-tails, twenty-five (25) one month from this date, and twenty-five (25) one month thereafter.

* * * * * * * *

The Deputy Magistrate is to be informed that it is the duty of the Magisterial Department to admonish parents for dressing up their children with jewels, and not of the Sessions Court.

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TANNA.

Robbery by Day, with Force.

The Magistrate is referred to the Sudder Foujdaree Adawlut's Circular Order 403, of July 7th 1849, and requested to take this opportunity of pointing out to the public the danger and folly of the practice of allowing children to be at large and unprotected when loaded with valuable ornaments.

* * * * * * *

The Court considers the Sowar Bhow bin Rajharao eminently deserving of reward for his activity and intelligence in apprehending the prisoner, and resolves, therefore, under the provisions of Clause 3rd, Section XXXIII. Regulation XII. of 1827, to award him the sum of Rs. 50.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

1856
October 9.

AHMEDNUGGUR.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Petition of Gungaram bin Keshow Sambaray to the Sudder Foujdaree Adawlut. Referred to the Magistrate, C. E. F. TYTLER, for Report, on the 20th August 1856.]

Suspicious and bad Character.

C. E. F. Tytler, Magistrate.

Prisoner.—Gungaram bin Keshow Sambaray.

Charge.—Suspicious and bad character.

Finding and Sentence by the Magistrate.—To furnish two securities each in the sum of five hundred (500) Company's rupees, commutable to six months' imprisonment, for his future good behaviour for one year, or, in default, to be imprisoned for that period, without labour, and on his release to be forwarded to the Magistrate.

Petition of Gungaram bin Keshow Sambaray to the Sudder Foujdaree Adawlut.—[Praying that the order in his case might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to report on the petition and the petitioner's character generally.

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AHMEDNUGGUR.

Suspicious and bad Character.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate has the honour to report that the statements contained in the petition are entirely false.

No attachment whatever was placed on petitioner's house, nor was the lithographic press even there ; it had been pawned to a member of the American Mission, from whom it was obtained on loan for a day or two, by the Superintendent of Police, and then returned.

The statement as to the brass vessels not having been given to their owner is equally groundless.

As regards petitioner's character, the Magistrate considers him the worst man in the Zillah.

He has been punished for robbery, is now under trial for forgery, and is generally mixed up with every conspiracy, fraud, and intrigue within his reach.

The petition is herewith returned.

Further Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to report the sentence passed on the prisoner for robbery, as alluded to in the 5th paragraph of his report, and its date; also the result of the proceedings alluded to in the prosecution against him for forgery ; and likewise whether it is true, as asserted, that he holds a Sunud in the Revenue Court.

Further Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate has the honour to report that the sentence for robbery, passed on prisoner under date the 26th July 1852, was a fine of Rs. 15, in default one month's imprisonment, without labour.

The following is an extract from the Hoozoor Deputy Magistrate's proceedings in the charge of forgery :—

" Prisoner at the bar is notorious for playing all sorts of wild tricks in the town, or, as in the present case, is suspected as capable of forging false documents. But the

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AHMEDNUGGUR.

Suspicious and bad Character.

evidence adduced does not go beyond the fact that two pieces of paper, containing the original signature of Ramjee, the creditor of prisoner, with a good space left out blank underneath these signatures, were discovered in the possession of prisoner. These pieces appear to have been cut out. But there is no proof whatever as to who cut them, or as to prisoner having had any intention of turning these signatures to any fraudulent purpose."

Petitioner holds a Revenue Sunud, granted him by the late Acting Collector, Mr. Bell, in evident ignorance, however, of petitioner's character.

Resolution of the Sudder Foujdaree Adawlut.—The Court do not consider that the Magistrate has shown sufficient grounds for calling upon the petitioner to give so heavy a security. It appears that he has once been convicted of a theft or trifling robbery, and is suspected of other misdeeds. There may be reasons for the Police to have an eye upon him, and for the Magistrate to adopt precautionary measures of a milder character than that complained of. The order for the petitioner's imprisonment for one year, in default of furnishing security for Rs. 500, is annulled.

The Court find that this petitioner was recommended for a Sunud as Vakeel in the Revenue Courts after his conviction for theft, a proceeding evidently taken in ignorance of his character, as the present Magistrate reports. It is not proper that the Sunud should remain in his hands, and it is to be certified, in order to its being cancelled.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

1856 October 9.

SHOLAPORE.

[Notice issued by the Magistrate of Sholapore, W. A. GOLDFINCH, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 25th September 1856.]

Notice by a Magistrate.

Notice.—The practice of swinging by the hook at certain fairs and 'jatras' being a barbarous and inhuman custom, and dangerous to the lives and limbs of those engaged in it, and as it forms no part of the religious creed of any part of the community, Government has determined to forbid the practice. It is therefore hereby proclaimed for general information, that whoever shall swing by the hook, or aid those engaged in it, will be punished according to Clause 1st, Section XIX. Regulation XII. of 1827.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—With reference to Government Circular No. 2974 of 1856, I have the honour to submit, for the approval of the Judges of the Sudder Foujdaree Adawlut, the accompanying copy, with its translation, of a Proclamation issued by me, prohibiting the practice of swinging by the hook, which prevails in certain fairs and jatras in forty-five villages of this Magistracy.

Resolution of the Sudder Foujdaree Adawlut.—Recorded.

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October 9.

TANNA.

Present, { WILLIAM HENRY HARRISON, / ROBERT KEAYS, } Puisne Judges.

[Case No. 17 of the Criminal Return of the Magistrate of Tanna for August 1856. Tried by the Acting Hoozoor Deputy Magistrate, DADOBA PANDOORUNG, on the 22nd August 1856. Confirmed by the Magistrate, E. C. JONES, on the 25th August 1856. Proceedings certified on the requisition of the Sudder Foujdaree Adawlut, on the petition of the prisoner Dajee bin Bhiwa.]

Robbery by Night, without Force; Receiving Stolen Property; and Aiding and Abetting in the Commission of the Offence.

Prisoners.—No. 1, Oosman wulud Yacoob, Mussulman, aged 20.
2, Dajee bin Bhiwa, Muratha, aged 17.

Charge.—Against prisoner No. 1, robbery by night, without force (Regulation XIV. Section XXXVII. Clause 4th, of 1827); in having, on or about 14th August 1856, (corresponding with Shrawun Shood 13th, Shuké 1778,) in the City of Tanna, Talooka Salsette, Zillah Tanna, secretly taken away from the dwelling-house of Gulam Mohidin wulud Abdool Kadir, one pair of silver anklets, of the value of Rs. 64, the property of the said Gulam Mohidin.

Also, further charged, under Regulation XIV. *Section* XLI. Clause 1st, of 1827, with "receiving stolen property"; in having then and there received the said pair of silver anklets from some person or persons unknown, knowing, or having evident ground to suppose the same to be stolen.

Against prisoner No. 2, aiding and abetting in the commission of the above offence (Regulation XIV. Section I. Clause 5th, of 1827); in having, about 18th August 1856, (corresponding with Shrawun Wud 2nd, Shuké 1778,) accompanied prisoner No. 1 to Bombay to sell the above stolen ornaments, having been fully aware that they were unlawfully obtained by prisoner No. 1.

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TANNA.

Robbery by Night, without Force; Receiving Stolen Property; and Aiding and Abetting in the Commission of the Offence.

Dadoba Pandoorung, Acting Hoozoor Deputy Magistrate.

E. C. Jones, Magistrate.

The prisoners plead not guilty.

Finding and Sentence by the Acting Hoozoor Deputy Magistrate, confirmed by the Magistrate.—It is quite evident, from the above investigation into this case, that prisoner No. 1 did enter the house of the complainant, and take away the ornaments on the night mentioned in the charge. In his defence he states that the daughter of the complainant, a young girl of about thirteen years of age, with whom he states he had friendship, gave this ornament to him at about 12 o'clock that night, which not only appears improbable, but he speaks his villany, combined with great audacity, in thus endeavouring to defame the character of an innocent young girl of a respectable family. Prisoner No. 2 is as depraved, or perhaps more so, than his companion, prisoner No. 1. It is evident that he had a full knowledge that the ornaments were obtained by prisoner No. 1 by unfair means, if not by stealth (should credit be given to his statement, which could hardly be accorded to him under the circumstances of this case), and yet he fully assisted his comrade in its disposal in the manner deposed to by the Police Havildar (witness No. 4).

From all these circumstances the Acting Deputy Magistrate has no hesitation to convict prisoner No. 1 of the first count of the charge preferred against him. He is therefore convicted, and found guilty of the same. He is discharged from the second count.

Prisoner No. 2 is convicted, and found guilty of the charge preferred against him.

Prisoner No. 1 is sentenced to be imprisoned, with hard labour, for twelve (12) calendar months, under Regulation XIV. Section XXXVII. Clause 4th, of 1827.

Prisoner No. 2 is sentenced to be imprisoned, with hard labour, for nine (9) calendar months, under Regulation XIV. Section I. Clause 5th, and Section XXXVII. Clause 4th, of 1827.

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This sentence is subject to the confirmation of the Magistrate.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

1856 October 15.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

BELGAUM.

[Case No. 35 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Deputy Magistrate, RAGHOBA JUNARDHAN, on the 14th March 1856. Tried by the Session Judge, A. W. JONES, on the 8th, 9th, 10th, 20th, and 27th May, 17th June, 23rd and 29th July, and 12th and 13th August 1856. Proceedings certified on the requisition of the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Conspiracy.

Prisoners.—No. 1, Kristnarow Venkteish, Brahmin, aged 35.
2, Nunjapa bin Timapa, Shree Vusnavee Brahmin, aged 51.

Charge.—Conspiracy (Regulation XVII. of 1828); in having, in the month of September 1855, (corresponding with Shrawun, Shuké 1777,) at Belgaum, in the Padshapoor Talooka, in the Belgaum Division of the Dharwar Zillah, entered into a combination to effect a corrupt purpose by illegal means, *i. e.* by offering a bribe to Mr. William Bertie, Sub-Assistant Inam Commissioner, to induce him to report favourably on the claims of one Roodro Punt to the two Inam villages of Geergaum and Neersosee.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoners are charged with conspiracy, in having entered into a combination to effect a corrupt purpose, by bribing Mr. Bertie, a Sub-Assistant Inam Commissioner, to induce him to report favourably on certain claims referred to him for inquiry, and the prisoners plead not guilty.

The evidence in the case consists principally of that of

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BELGAUM.

Conspiracy.

Mr. Bertie, who states that, in August 1855, he was assigned the duty of inquiring into the claim of one Roodro Punt Appa to the two Inam villages of Geergaum and Neersosee, and that, one day early in September, the prisoner No. 2 (Nunjapa), then an English writer in the Political Agent's Office in Belgaum, came and informed him that the prisoner No. 1 (Kristnarow) had told him the Inamdar was willing to give Rs. 1,000 or more, if these villages were assigned to him. Mr. Bertie states that he stopped the conversation at this point, but that, having mentioned it to Captain Gordon, his superior, he was desired by him to try and expose the affair, on which, on the 6th September, he told the prisoner No. 2 (Nunjapa) to bring Kristnarow to his house, which he accordingly did.

On their arrival at Mr. Bertie's, two English Clerks, belonging to the Inam Commissioner's Office, who happened at the time to be making an evening call, were requested by Mr. Bertie to keep the prisoner No. 2 (Nunjapa) in conversation, while he took the prisoner No. 1 into his house.

The room he took him into was lighted by an argand lamp, and behind a glass door opening into it Mr. Bertie had already placed three Karkoons to witness what passed.

Mr. Bertie states that, after some discussion, the prisoner No. 1 (Kristnarow) agreed to give him Rs. 2,000 if both the villages, and Rs. 1,500 if only one of the villages were continued to the Inamdar; and he promised, moreover, to pay an instalment of Rs. 500 in fifteen days, and passed an agreement to that effect in the form of a bond for money borrowed; and on Mr. Bertie's insisting that it must contain some allusion to the matter for which it was passed, the prisoner No. 1 added another paragraph, stating the subject of the agreement, and its terms, and signed it, as agreed to, on the authority of

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1856 October 15.

BELGAUM.

Conspiracy.

Roodro Punt Appa, and, giving it to Mr. Bertie, left the house, on which Mr. Bertie called out the three Karkoons and showed them the paper thus written, and made them at once write down a statement of what they had seen and heard.

The deposition of Mr. Bertie is confirmed by the evidence of the two English writers (Messrs. Lastings) who prove that one evening Nunjapa (prisoner No. 2) came to Mr. Bertie's house, accompanied by a Brahmin dressed in a cloak, who, while they talked to Nunjapa, went inside the house with Mr. Bertie, and was there with him about an hour. They did not, however, see this Brahmin distinctly enough to recognise him.

It is further corroborated by the evidence of the three Karkoons, who prove all the main points of the conversation detailed by him as having taken place with the prisoner No. 1, whom they depose to having seen distinctly, and whom they heard plainly agree to give a bribe relative to these two Inam villages; and they also depose that they saw the prisoner write a bond, and that this same bond was shown to them immediately after the departure of the prisoner No. 1, by Mr. Bertie. The evidence of these witnesses, with some trifling exceptions about the door and room where they were concealed, is quite consistent throughout. Notwithstanding their lengthened examination by the Vakeels, the Session Judge can see no reason to doubt any part of it. One of these witnesses also proves that the prisoner Kristnarow had on a cloak, which so far agrees with the description given by the two clerks of the Brahmin whom they saw arrive with the prisoner Nunjapa, at Mr. Bertie's house.

The defence of prisoner Nunjapa is a denial that he ever mentioned the bribe to Mr. Bertie, and that, consequently, he is not guilty of anything criminal; but he admits having mentioned to Mr. Bertie that the prisoner No. 1

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had spoken to him about these claims, and that he had taken him to Mr. Bertie's house one evening.

The prisoner No. 1, in his defence, has set up an *alibi*, and this is supported by the respectable evidence of a Mamlutdar of the Kolapore State, and other persons, and would go to show that the prisoner was at Kolapore on the 4th, 6th, and 7th September 1855. With regard, however, to this evidence, it is to be observed, that ever since the prisoner discovered that Mr. Bertie did not intend really to take the bribe, that is, from about the 20th September 1855, he must have been aware of what would be the charge against him; whereas this defence was not mentioned until the 27th May 1856, that is, until the close of the case for the prosecution. On considering, therefore, the interest which the prisoner No. 1, both on his own account, as an influential person at Kolapore, and as the Vakeel of an Inamdar, would have made for him, and that it is in direct contradiction to evidence of the truth of which there be no doubt whatever, and that the chief witness for the prosecution is not charged by the prisoners with being actuated by any ill-will to them, the Session Judge thinks he may safely reject the evidence to this *alibi* as made up for the purpose. Putting aside, therefore, the special defence offered, it only remains to see whether the evidence is sufficient to support the charge of conspiracy. The Session Judge is of opinion that it is, because the combination between the two prisoners, in order to effect the corrupt purpose of bribing Mr. Bertie, is proved by the fact mentioned by Mr. Bertie that the prisoner Nunjapa was his first informant in the matter of the offered bribe. Now this was Mr. Bertie's statement from the first, and his evidence may, in the Session Judge's opinion, be relied on implicitly; moreover, the circumstances of the case support this statement; for, if Nunjapa had not said anything about a bribe, why should Mr. Bertie have put these

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Karkoons in concealment to witness his interview with the prisoner No. 1? The combination between the prisoners is further supported by the fact, admitted by the prisoner No. 2, that he went to Mr. Bertie's house with the prisoner No. 1, who was going there confessedly on the business of these villages; and as the conversation of the prisoner No. 1 and Mr. Bertie on that evening, and the passing of the bond on the subject of the bribe, are also clearly proved, the Session Judge is of opinion that the evidence is sufficient to warrant the conviction of the prisoners, who are accordingly convicted of conspiracy, as charged; in having, in the month of September 1855, (corresponding with Shrawun, Shuké 1777,) at Belgaum, in the Padshapoor Talooka, in the Belgaum Division of the Dharwar Zillah, entered into a combination to effect a corrupt purpose by illegal means, *i. e.* by offering a bribe to Mr. William Bertie, Sub-Assistant Inam Commissioner, to induce him to report favourably on the claims of one Roodro Punt to the two Inam villages Geergaum and Neersosee.

With regard to the punishment to be assigned, the Session Judge thinks it right to take into consideration the fact that the prisoner No. 2 (Nunjapa) has lost the advantage of thirty years' service with Government by his dismissal.

After considering, therefore, the nature of the crime committed, and the punishment assigned thereto in Regulation XVII. of 1828, the following sentence is passed:—

That you, Kristnarow Venkteish, be imprisoned for one (1) year, with hard labour, and then pay a fine of two thousand (2,000) rupees, or else be imprisoned for a further period of two (2) years, also with hard labour.

And that you, Nunjapa, be imprisoned, and kept to hard labour, for one (1) year, and then pay a fine of

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two hundred (200) rupees, or else be imprisoned for a further period of six (6) months, also with hard labour.

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* * * * * * * *

The Session Judge observes that the Deputy Magistrate questioned the prisoner Nunjapa as if he had been a witness. He should have satisfied himself with asking the prisoner what he had to state in his defence, and taken down that statement.

With regard to the remarks in paragraphs 16 and 17 of the Deputy Magistrate's summary of the evidence at the close of his proceedings, the Session Judge thinks, when the Deputy Magistrate penned them, he must have forgotten that the investigation of this case was in the first instance solely made by the Inam Commissioner himself, who must therefore have been aware better than any one else whether Mr. Bertie had done anything blameable in it. The Session Judge does not think it is necessary, therefore, to forward the Deputy Magistrate's advice as to the conduct of the subordinates in the Inam Commissioner's Office.

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—You are hereby requested to certify the papers and proceedings connected with the matter set forth in the accompanying petition, presented to this Court by Kristnarow Venkteish, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—In return to the within Precept, the papers and proceedings called for are herewith certified to the Sudder Foujdaree Adawlut.

The Session Judge begs at the same time to say that

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he does not understand how this petition has reached the Judges, as the prisoner has not had an opportunity of presenting one to him, for he has not made his monthly visit to the Jail for the purpose of receiving petitions and appeals against their sentences by prisoners, since the date of the prisoner's conviction.

The original petition is herewith returned.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut ; Minute by Mr. Harrison.—The petitioners have been convicted of conspiracy, in having combined to corrupt Mr. Bertie, a Sub-Assistant to the Inam Commissioner, by offering him a bribe for services to be rendered in his official capacity. The Session Judge has found it proved that the prisoner No. 1 (Kristnarow) did open a negotiation for paying Mr. Bertie a bribe, although evidence to an *alibi* was put in, which he gives reasons for rejecting; also that the prisoner No. 2 combined with him in the attempt.

The share of the prisoner No. 2 in the matter, so far as it is shown in evidence on the trial, consists in his having informed Mr. Bertie that Kristnarow (prisoner No. 1) had told him that he would give Rs. 1,000 for a favourable decision on his master's claim to certain villages which was the subject of a report, the preparation of which was entrusted to Mr. Bertie. A few days afterwards, he, at Mr. Bertie's desire, took Kristnarow to the bungalow of the former, on an evening when (as witnesses who were in waiting concealed for the purpose depose) the negotiation was carried on. Nunjapa was not present at this interview. Mr. Bertie afterwards took him into his confidence, and arranged a further meeting, at which part of the money was to be paid, and the exposure of the intrigue completed,—an expectation disappointed by Kristnarow apparently getting intelligence of the counterplot, and hastily quitting Belgaum. It seems to have been suspected that Nunjapa gave the

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information which led to the failure of the scheme, and he was included in the prosecution as a confederate of Kristnarow. There were, however, three other Brahmin Karkoons in Mr. Bertie's confidence.

The prisoner Nunjapa denies that he told Mr. Bertie about the bribe. He admits that Kristnarow asked him to speak to Mr. Bertie, with whom he was intimate, and who seems to have been in the habit of consulting him in matters relating to his duties, regarding the question of the villages; and also that he took Kristnarow to Mr. Bertie's house; but he asserts that he knows not what occurred there.

On consideration of the whole circumstances, I come to the conclusion that there is reason to suspect that Nunjapa was a go-between in a negotiation for bribing Mr. Bertie. There must, however, be more than suspicion to justify a conviction of a criminal offence, and I do not consider that combination is proved against Nunjapa, or that it is to be inferred from the evidence on record that he conspired with Kristnarow for the corrupt purpose indicated in the charge.

The charge of conspiracy fails altogether in Nunjapa's acquittal, and both the prisoners must be discharged.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—The prisoners in this case are accused of conspiracy, in having combined together to induce Mr. Bertie, the Assistant Inam Commissioner, to accept of a bribe to report favourably regarding two villages (Geergaum and Neersosee), so as, if possible, to obtain the continuance of these villages in perpetuity to the Inamdar Roodro Punt.

In pursuance of this conspiracy, the prisoner No. 2 (Nunjapa) is alleged to have gone to Mr. Bertie, and told him that a certain person was willing to give him a bribe on certain conditions, on which Mr. Bertie replied that he did not wish to have anything to do with such matters, and desired that he might hear nothing more on the subject.

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The prisoner No. 1 (Kristnarow) seems to have acquiesced, and nothing more was said, and most likely nothing more *would* have been said regarding the bribe, if it had not been for Mr. Bertie himself. He, however, proceeded to his immediate superior, Captain Gordon, and informed him of what had occurred, and subsequently, under Captain Gordon's instructions, *sends for prisoner Nunjapa, and desires him to bring the person who would give the bribe to his house.* This was done by Nunjapa at *Mr. Bertie's desire*, and Kristnarow is now arraigned as a conspirator for complying with Mr. Bertie's instructions.

I am of opinion that this, which constitutes the whole part taken by Nunjapa in the affair, cannot be held to amount to a crime, and that Kristnarow must be acquitted and discharged.

It is hardly necessary to enter into the case of the prisoner No. 2, as his acquittal must follow that of Kristnarow as a matter of course; but I may mention that I consider the evidence regarding the *alibi* to be unexceptionable. It seems to have been offered by the prisoner on the first opportunity which he considered favourable; for he explains why he did not give it before the Magisterial Authorities; and, therefore, it is not open to the objection raised against it in the Session Judge's finding. The evidence supporting it certainly seems to me to be as credible as that brought forward for the prosecution, and I cannot but hold that the story told by the witnesses for the defence is as probable as that on the other side.

I would acquit both prisoners, and order their discharge.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoners to be discharged.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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[Case No. 118 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Second Assistant Magistrate, C. F. H. SHAW, on the 23rd August 1856. Tried by the Session Judge, A. W. JONES, on the 30th August and 4th September 1856. Proceedings submitted for the final decision of the Sudder Foujdaree Adawlut, by the Session Judge.]

Perjury.

Prisoner.—Santveerowa kom Goorapa, Hutkur, aged 45.

Charge.—Perjury (Regulation XIV. Section XVI. Clause 1st, of 1827); in having, on Thursday, the 7th August 1856, (corresponding with Shrawun Shood 6th, Shuké 1778,) before the Sessions Court at Dharwar, when examined as a witness in a case wherein Sunga and two others were charged with rape and detaining a woman in unlawful confinement, wilfully made a false statement on solemn affirmation, for the purpose of defeating the ends of justice, by declaring, on solemn affirmation, that the deposition she had given on solemn affirmation before the Police Amuldar of Pursghur, in the Belgaum Division of the Dharwar Zillah, on the 28th June last, to the effect that Mulee was in a room in her house from Saturday to Monday, was false, and that she had never made such a statement; whereas, as she well knew, she had, on the 28th June 1856, stated before the Police Amuldar, on solemn affirmation, that Mulee was in her house until Monday.

The prisoner pleads not guilty.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner was a witness in a case in which three men were charged with having committed a rape upon a woman named Mulee or Mulowa, and with having unlawfully detained her from Saturday evening till Monday evening; and the prisoner's evidence went to show that this woman

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was in her house (she being the mother of Sunga, one of the prisoners) till Monday. This, however, she denied before the Session Judge, and declared she had never said anything of the kind. The evidence was material in the case only so far as that it proved the woman Mulee was in the house of one of the prisoners.

The deposition, as first given by the prisoner, has been proved before the Court, and the fact that Mulee was in the house of the prisoner's son, as stated, is shown by the evidence of Mulee, the complainant, which is to a certain extent corroborated by the evidence of Mortandapa, who shows that she was brought to his house by the three prisoners, Sunga, Chenbusia, and Buslinga, on the Monday evening. As, moreover, the prisoner in this case had evidently, in denying her former deposition, an intention of favouring her son and enabling him to escape conviction, and as she cannot be considered as absolved by her relationship with him from the necessity of speaking the truth when called on to do so, the Session Judge considers she may be convicted of perjury; in having, on Thursday, the 7th August 1856, (corresponding with Shrawun Shood 6th, Shuké 1778,) before the Sessions Court at Dharwar, when examined as a witness in a case wherein Sunga and two others were charged with rape and detaining a woman in unlawful confinement, wilfully made a false statement on solemn affirmation, for the purpose of defeating the ends of justice, by declaring, on solemn affirmation, that the deposition she had given on solemn affirmation, before the Police Amuldar of Pursghur, in the Belgaum Division of the Dharwar Zillah, on the 28th June last, to the effect that Mulee was in a room in her house from Saturday to Monday, was false, and that she had never made such a statement; whereas she well knew she had, on the 28th June 1856, stated before the Police Amuldar, on solemn affirmation, that Mulee was in her house until Monday.

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And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XVI. Clause 2nd, the following sentence is passed:—

That you, Santveerowá, be imprisoned, and kept to hard labour, for one (1) month, and pay a fine of forty (40) rupees, or be imprisoned for two (2) more months, also with hard labour. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—There seems no reason to doubt that prisoner in this case did make a false statement, on solemn affirmation, before the Sessions Court. Considering the relationship to one of the prisoners, I think the prosecution might have been omitted, and, in confirming the conviction, I would mitigate the sentence to ten days' imprisonment.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—The prisoner in this case is the mother of Sunga bin Gorapa, one of the prisoners who were accused of rape, and the detention of the person of a woman named Mulee in unlawful confinement for four days. In her first deposition she admitted that the woman had been in the house, and supported the prosecution; but when she came before the Session Judge she denied this statement altogether.

Now the Regulations say that, with the exception of the crime of murder, treason, and gang robbery, the concealment of any crime by father, mother, brother, or sister, &c. is not punishable. I am therefore of opinion, that taking the evidence at all of her son was irregular, as no dependence could be placed upon it.

Under this view of the case, I would remit the remainder of the punishment to which she has been sentenced, and order her discharge.

Resolution of the Sudder Foujdaree Adawlut.—Conviction confirmed, and prisoner sentenced to ten (10) days' imprisonment.

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1856 October 15.

Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

Belgaum.

[Case No. 119 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Second Assistant Magistrate, C. F. H. Shaw, on the 23rd August 1856. Tried by the Session Judge, A. W. Jones, on the 30th August 1856. Proceedings submitted for the final decision of the Sudder Foujdaree Adawlut, by the Session Judge.]

Perjury.

Prisoner.—Gungowa kom Revapa, Halkar, aged 25.

Charge.—Perjury (Regulation XIV. A. D. 1827, Section XVI. Clause 1st); in having, on or about Thursday, the 7th August 1856, (corresponding with Shrawun Shood 6th, Shuké 1778,) before the Sessions Court of Dharwar, when examined as a witness in the case of Sunga and two others, charged with rape and unlawful detention, wilfully made a false statement on solemn affirmation, in declaring that she had never given a deposition before the Police Amuldar of Pursghur to the effect that she had seen one Mulee in Budananour's house, on Sunday (the 22nd June), when she gave her bread at the request of her brother Chenbusapa; whereas, as she well knew, she had, on the 28th of June, stated on solemn affirmation that she had seen Mulee in Budananpur's house on the Sunday evening, and given her bread there.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with perjury, and pleads not guilty.

The prisoner was a witness in a case in which three men were charged with having committed a rape upon a woman named Mulowa, and with having unlawfully detained her from Saturday until Monday evening, and her evidence before the Police Amuldar, which she confirmed before the Assistant Magistrate, went to show that she had been told by her brother (one of these three prisoners)

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to take some food to this woman in the house in which she was confined, and that she had done so. Before the Session Judge she entirely denied this, and declared she had never made any such deposition. This evidence was so far material to the charge, that it showed the woman was at the house where she complained of having been detained. It is evident that the deposition of the prisoner before the Session Judge was given with the intention of assisting her brother to escape conviction; and considering, therefore, that her first deposition before the Police Amuldar has been proved before the Court, there can be no doubt that she perjured herself in denying it before the Session Judge, and she is accordingly convicted of wilful perjury; in having, on or about Thursday, the 7th August 1856, (corresponding with Shrawun Shood 6th, Shuké 1778,) before the Sessions Court of Dharwar, when examined as a witness in the case of Sunga and two others, charged with rape and unlawful detention, wilfully made a false statement on solemn affirmation, in declaring that she had never given a deposition before the Police Amuldar of Pursghur to the effect that she had seen one Mulee in Budananour's house, on Sunday (the 22nd June), when she gave her bread at the request of her brother Chenbusapa; whereas, as she well knew, she had, on the 28th of June, stated on solemn affirmation that she had seen Mulee in Budananour's house on the Sunday evening, and given her bread there.

And, therefore, considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. A. D. 1827, Section XVI. Clause 2nd, the following sentence is passed:—

That you, Gungowa, be imprisoned, and kept to hard labour, for one (1) month, and pay a fine of forty (40) rupees, or be further imprisoned for two (2) more months,

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also with hard labour. Subject to the confirmation of the Sudder Foujdaree Adawlut.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The remarks made in the last case apply to this also, and I would here mitigate the sentence in like manner to ten days' imprisonment.

Minute by Mr. Keays.—It is quite certain that the prisoner did make the false statement with which she is charged, but considering the relationship existing between her and one of the prisoners against whom she was called on to give evidence, I would remit the remainder of the punishment awarded.

Resolution of the Sudder Foujdaree Adawlut.—The conviction confirmed, and prisoner sentenced to ten (10) days' imprisonment.

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RUTNAGHERRY.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Notice issued by the First Assistant Magistrate in Charge, G. SCOTT, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 2nd October 1856.]

Notice by a Magistrate.

Notice.—Whereas the practice of swinging men or women by the hook has hitherto obtained in the village of Neoré, Talooka Rutnagherry: by order of the Right Honorable the Governor in Council, as contained in their Circular No. 2974, of 29th August 1856, this Notice is issued, according to Regulation XII. Section XIX. Clause 1st, of 1827, to inform all parties concerned, that the said practice of swinging by the hook is henceforth strictly prohibited. Any individual or individuals who may hereafter take part in any such proceeding of swinging by the hook, either as a principal or accessary, will be punished according to the provisions of the Regulation aforesaid.

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Notice by a Magistrate.

List showing the Names of Towns and Villages in the Rutnagherry Zillah in which the Practice of Swinging by the Hook is known to exist:—

No.	Names of Villages.		Turuf.	Talooka.
1	Moujé	Puroolé	Patt.	
2	„	Tulgaom		
3	Kusba	Warad		
4	Moujé	Pendoor	Warad.	
5	„	Naudose		
6	„	Dhamapoor		Malwan.
7	„	Kalsé		
8	„	Amdose	Malund.	
9	„	Hoombrut		
10	„	Janowlee	Salsee.	
11	„	Kurujen		
12	„	Wadé		
13	„	Pudel		
14	„	Tirloot	Kharapatun.	Viziadroog.
15	„	Nandum		
16	„	Poorul		
17	„	Goonkhudee	Laujé.	
18	Kusba	Neoré	Kuryat Neoré.	Rutnagherry.
19	Wada	Busnee		
20	Moujé	Khadpolee		
21	„	Walopén		
22	„	Udrén		
23	„	Kamté		
24	„	Kolukwadee		
25	„	Tewré		
26	„	Neerbad		
27	„	Moondhé	Chiploon.	
28	„	Pédhé		
29	„	Kherdee		
30	„	Teroo		
31	„	Kulwundé		
32	„	Wehélé		Unjunwell.
33	„	Moorowné		
34	„	Koombharlee		
35	„	Dulwutné		
36	„	Daheolee		
37	„	Pathurdé		
38	„	Gimwe	Velumb.	
39	„	Kusba Velumb		
40	„	Mulun		
41	Kusba	Gohagnee		
42	Péta	Unjunwell		
43	Moujé	Usgobe	Gohagur.	
44	„	Welneshwur		
45	„	Nurwun		

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RUTNAGHERRY.

Notice by a Magistrate.

No.		Names of Villages.	Turuf.	Talooka.
46	Moujé	Hedwee	Gohagur.	Unjunwell.
47	„	Moondhé		
48	„	Sandhen		
49	„	Chaton		
50	„	Luwel		
51	„	Hedlee		
52	„	Gooldhé		
53	„	Tulé	Khed.	
54	„	Ambayen		
55	„	Toorwul Jowlee		
56	„	Sakhur		
57	„	Chorowné		
58	„	Amdus		
59	„	Mandwé	Natoo Bundar.	
60	Ghera	Rusalgud		
61	Moujé	Ambowlee		
62	„	Teesunjee		Sooverndroog.
63	„	Awshee		
64	„	Koolwundee		
65	„	Dewankhowtee	Khed.	
66	„	Moosad		
67	„	Dhamundé		
68	„	Sheldee		
69	„	Bhelsye		
70	„	Meerlé		
71	„	Anjurlé		
72	„	Erlné	Kelsee.	
73	Kusba	Kelsee		
74	Moujé	Tadeel	Natoo Palwun.	
75	„	Sowelee		
76	„	Ghonsalé	Weshwee.	

Letter from the First Assistant Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the approval of the Judges of the Sudder Foujdaree Adawlut, a Murathee Notice, with its English translation, as issued by me in the village of Neoré, Talooka Rutnagherry.

I have the honour to state, for the information and approval of the Judges, that similar Notices have been issued in the 76 villages, as per accompanying list, to which the practice has hitherto been confined.

Resolution of the Sudder Foujdaree Adawlut.—May be recorded.

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Present, WILLIAM HENRY HARRISON, ROBERT KEAYS, Puisne Judges.

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POONA.

[Case No. 25 of the Calendar of the Poona Sessions Court for 1856. Committed by the Deputy Magistrate, NANA MOROJEE, on the 16th April 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 21st and 22nd April 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Prisoner.—Sukoo, Father's name Baloo, Kolatee, aged 45.

Stealing a Child from its Guardians; and Receipt of a Stolen Child, knowing, or having evident grounds to believe it to be such.

C. M. Harrison, Acting Session Judge.

[See pages 804 to 808, Vol. V. for previous proceedings in this case.]

Finding and Sentence by the Sessions Court.—On the evidence referred to in the Court's previous finding of the 22nd April last, the prisoner is convicted of breach of religious law (receiving a child, knowing it to be stolen); in having received the aforesaid girl Tooljee into her possession, knowing, or having evident grounds to believe her to have been stolen, or come by through unfair means.

Under the provisions of Clause 2nd, Section IX. Regulation VIII. of 1831, and Section I. Clause 1st, Subclause 7th, Regulation XIV. of 1827, (the Hindoo Law Officer of the Poona Court being under suspension,) a written question regarding the punishment prescribed by the religious law of the prisoner is put to the Shastree of the Ahmednuggur Adawlut, through the Session Judge, and, pending the receipt of an answer, further proceedings are postponed.

* * * * * * *

Read and recorded a reply from the Hindoo Law Officer of the Ahmednuggur Adawlut, which is to the effect that the punishment prescribed by the Shaster for receiving a child knowing it to have been stolen, is a fine to the amount of Rs. 16-14-0, and for branding it (in the case of a woman), the loss of an arm or fine.

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POONA.

Stealing a Child from its Guardians; and Receipt of a Stolen Child, knowing, or having evident grounds to believe it to be such.

The above punishment is, under the provisions of Section I. Clause 1st, Sub-clause 7th, Regulation XIV. of 1827, commuted as follows :—

That you, Sukoo, the daughter of Baloo, be imprisoned, with hard labour, for three (3) years.

Precept issued by the Sudder Foujdaree Adawlut to the Acting Session Judge.—The Acting Session Judge is to be requested to certify the papers and proceedings, and to report in English and Murathee why the prisoner was detained before sentence in Jail, bail having, as petitioner says, been offered.

Return of the Acting Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The papers and proceedings are herewith certified. The petitioner was detained before sentence in the Jail because, having been tried and convicted, the Acting Session Judge did not consider himself at liberty to accept bail.

The petition is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The Hindoo Law Officer has declared the offence of which the prisoner was convicted is punishable by fine, at the Court's discretion. It is not competent to the Court, therefore, to award the punishment of imprisonment, except as the ordinary commutation in default of payment of a fine, because the sentence proposed by the Shastree is one of those sanctioned by the Regulations.

The sentence must be annulled, and the case returned to the Session Judge, in order that a legal sentence of fine, or, in default, imprisonment, may be passed.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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SHOLAPORE.

[Petition of Amursing wulud Chutursing to the Sudder Foujdaree Adawlut. Referred for Report to the Magistrate of Sholapore, W. A. GOLDFINCH, on the 11th June 1856.]

Refusing to give Security.

[See pages 32 to 35, Vol. VI., for previous proceedings in this case.]

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—Under the circumstances explained in my return, No. 355, to the Court's Precept No. 545, of the 11th June last, I have the honour to report that the periods for which the persons named below* are confined on my authority will expire on the dates specified opposite each; and as they are all concerned in one case, and to avoid separate application for each man, I request that you will obtain the confirmation of the Judges for their confinement being prolonged until the period of five years, for which they were required to furnish security for good conduct, expires.

Resolution of the Sudder Foujdaree Adawlut.—The Court sanction the imprisonment for a further period of twelve (12) months, when another application should be made, if further confinement is necessary.

* 1, Amersing wulud Gungaram, 19th October 1856.
2, Pudansing wulud Kesursing, 5th November 1856.
3, Govindsing wulud Nursingbhaw, 21st November 1856.
4, Amersing wulud Chutursing, 26th November 1856.
5, Kooversing wulud Kisensing, ditto ditto.
6, Salmansing wulud Kesursing, ditto ditto.

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DHARWAR.

Present, { WILLIAM HENRY HARRISON, / ROBERT KEAYS, } Puisne Judges.

[Case No. 87 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the First Assistant Magistrate, S. St. J. GORDON, on the 10th July 1856. Tried by the Session Judge, A. W. JONES, on the 19th and 20th August and 4th and 6th September 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Wilful Murder.

Prisoner.—Kenchapa bin Yelapa, Berud, aged 40.

Charge.—Wilful murder (Regulation XIV. Section XXVI. Clause 1st, A. D. 1827); in that, in the Inam village of Mewoondee, in the Gootul Péta, in the Raneebednoor Talooka of the Dharwar Division and Zillah, in a shed adjoining the house of Goolapa Jungum, on Saturday morning, at about 2 o'clock, 28th June 1856, (corresponding with Jésht Wud 10th, Shuké 1778,) he, the prisoner, purposely, and without justifiable or extenuating cause, with some sharp instrument, such as a 'koita' or bill-hook, did rip open the belly of the deceased Busapa bin Kenchyelapa, whereby his bowels fell out, and inflicted such injuries that the said Busapa then and there expired.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoner is charged with wilful murder, and pleads not guilty.

It appears that Doorgowa, the wife of the prisoner, left him for the deceased some four years ago, and that since then this woman has lived with the deceased, though not in his house. The complainant, a brother of the deceased Busapa, states that she lived in his village of Mewoondee for about two years after she had left her husband, in a house by herself, supported by his brother, and that after that she went to live with her own brother in the neighbouring village of Itgee, but that there also she was entirely supported by his brother (the deceased), who used to go and visit her there, and he

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says that she also used to come and stay with him in Mewoondee, living and eating with the family, and sleeping with Busapa (the deceased) in an open shed, next door to the family house.

On the last occasion Doorgowa paid a visit of this kind to Busapa in his village of Mewoondee, the complainant says she came on the Tuesday or Wednesday, and that on the evening of Friday, the 27th June, she, with two of her children and the deceased, with another child of his, all went together after dinner to their usual sleeping-place, the open shed, next to his house. In the course of this night (or, as stated in the charge, at about 2 o'clock in the morning of Saturday), he says that Doorgowa came and called him to see Busapa, on which he got up, and, going into the shed, found, on passing his hands over his brother, that his stomach was cut open; so he went back to his house and called another brother, and got a light, and, going in together, they found Busapa already quite dead.

On this the Police Patel was sent for, and the usual inquiries begun; but it appears that Doorgowa, after having called in the brother of deceased, left the shed where the deceased was killed, and went off with her two children to a temple outside Mewoondee, till daylight, and then went home to her brother's house in Itgee.

In the course of this Saturday, the Joint Police Officer came, and an Inquest was held on the body of the deceased, the report of which was proved before the Court, and shows that he had died of a very severe wound in the belly, apparently inflicted with a 'dhuratee' or sickle.

The Police Patel deposes that on the Saturday morning he had already suspected the prisoner of the crime, as it had been committed on the deceased when he was actually sleeping with prisoner's former wife, Doorgowa; and he deposes that when he went to Itgee with the

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Sowar to bring her back to Mewoondee, she told him that it was the prisoner who had committed the murder.

The evidence against the prisoner consists of that of this woman Doorgowa and her child by him, an intelligent little girl of ten years old, both of whom depose to having perceived a man in the shed on the night, who spoke to Doorgowa; and they both depose that they fully recognised this man to be the prisoner by his voice; and that they could recognise the prisoner by his voice was proved to the satisfaction of the Session Judge.

It is to be observed of this evidence, however, that Doorgowa did not mention the prisoner's name at once; but the Session Judge considers that the alarm she must have felt at the fate of the person in whose offence she had herself shared, may account for this, and that her going off at once to her own village was, under the circumstances, only natural. She seems, in her examination by the Vakeel, to have contradicted herself as to the time that passed before she called in the deceased's brother. The Session Judge considers it most probable that the last answer is true, and that she did allow a considerable time to elapse before she went out for this purpose; for it is very likely she would be too frightened to move for some time, and this would account for Busapa's having been found dead by his brother, even though his death was not so instantaneous as supposed by the Assistant Magistrate.

The Session Judge has no doubt, moreover, that the motive assigned for the murder is sufficient, for he has known instances of revenge delayed as long; besides, it must be remembered that the offence, though originally committed a long time ago, was still going on, and in this instance, it may be said, almost before the prisoner's eyes, for the prisoner's house, it appears, is quite close to that of deceased's family; and though the Vakeel says that the prisoner must have had many opportunities of

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revenging himself, as the deceased constantly went alone to Itgee, it is a sufficient answer to this that the deceased was a tall, strong man, and the prisoner a very short, slight one, so that it is unlikely he would have ventured to attack the deceased openly.

It is shown by the Civil Surgeon* that the 'roomal,' or cloth taken from the prisoner's head, had two small spots of blood on it, and from such a wound as was received by deceased, blood, no doubt, would have spurted out with some force; but it was impossible to prove that the prisoner wore this at the time the murder was committed, as the two witnesses who recognised him then could not say positively whether he had any cloth round his head, and it is not the kind of cloth which is worn anywhere but on the head.

There is this difficulty in the case, that the principal witness against the prisoner is, or rather was, his own wife; but, considering the time she had left him, the Session Judge concludes she is not precluded from giving evidence against him, and, therefore, is of opinion that the prisoner may be convicted of murder; in that, in the Inam village of Mewoondee, Péta Gootul, in the Raneebednoor Talooka of the Dharwar Division and Zillah, in a shed adjoining the house of Goolapa Jungum, on Saturday morning, at about 2 o'clock, 28th June 1856, (corresponding with Jésht Wud 10th, Shuké 1778,) he (the prisoner) purposely, and without justifiable or extenu-

* *Deposition of the Civil Surgeon.*—The roomal, dhotee, and dhuratee, now before the Court, have been carefully examined by me with a view to detecting the presence of blood upon them. On the former, viz. the roomal, I found three small spots of blood, each about the size of the one I now produce. There were several red stains upon the dhotee, which show evident attempts had been made to conceal by rubbing them over with charcoal. I have, however, been able to test them carefully, and I have found they were not caused by blood; and there is none on the cloth. I have not been able to detect the presence of blood upon the dhuratee.

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ating cause, with some sharp instrument, such as a koita or bill-hook, did rip open the belly of the deceased Busapa bin Kenchyelapa, whereby his bowels fell out, and inflicted such injuries that the said Busapa then and there expired.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. Section XXVI. Clause 4th, A. D. 1827, the following sentence is passed :—

That you, Kenchapa, be transported across the seas for the term of your natural life. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The evidence on which the prisoner has been condemned consists of that of his wife and daughter. From the former he had been separated for some years. She deposes to his speaking to her,—awaking her for the purpose, apparently, just after ripping open her paramour. But in giving the alarm, an hour and a half later, she did not mention the prisoner's name. She went away with her child to Itgee, her residence, and was being brought back next morning, when she first spoke of having seen and recognised the murderer, her husband. It is extraordinary, if her story is true, that she did not tell deceased's brother at the time who had killed him. Had she done so, the murderer might have been seized, reeking with the blood of his victim. But it casts much suspicion on her story when she tells this for the first time next morning, after being herself arrested. The girl's story tallies with her mother's. But there is the fear that she was instructed to tell it. If the prisoner did commit the murder, why should he have unnecessarily aroused a witness to his presence?

The blood spots on his clothes certainly are not satisfactorily accounted for; but the proof is insufficient to sustain the charge, and I would acquit the prisoner.

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R. Keays, Puisne Judge.

Minute by Mr. Keays.—The evidence against the prisoner consists of the statement of his wife and daughter. The former has been separated from him for about four years, since when she has received no support from him, and had no communication with the prisoner at all. Supposing this woman's deposition to be unexceptionable, which I am of opinion that it is not, from the fact of its being impossible that her testimony can be indifferent, I do not think that, after a separation of four years, she could possibly have been able to recognise her husband's voice immediately she heard it, and I can still less believe that the prisoner's daughter, a child of ten years of age now, and only six when she was taken from her father, could, under the same circumstances, have been able to do so. Under this view of the case, I am of opinion that the prisoner should be acquitted and discharged.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoner to be discharged.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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AHMEDNUGGUR.

[Case No. 21 of the Calendar of the Ahmednuggur Sessions Court for 1856. Committed by the Deputy Magistrate, DADOBA PANDOORUNG, on the 31st March 1856. Tried by the Session Judge, J. W. WOODCOCK, on the 28th, 29th, and 30th May, 7th and 20th June, and 2nd, 5th, and 15th July 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of Heemutmul wulud Jodharam and six others, excepting Manmul wulud Hemraj.]

Conspiracy; Forgery; and making a Fraudulent Use of Forged Documents, knowing them to be so.

Prisoners.—No. 1, Johurmul wulud Moturmul, Marwaree, dead.

2, Foujmul wulud Johurmul, Marwaree, aged 38.

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Prisoners.—No. 3, Luchmondas *alias* Bapoo wulud Johurmul, Marwaree, aged 25.
4, Manmul wulud Hemraj, Marwaree, aged 39.
5, Hameermul wulud Moteeram, Marwaree, aged 35.
6, Thanmul wulud Hemraj, Marwaree, aged 50.
7, Oomedmul wulud Hemraj, Marwaree, aged 36.
8, Heemutmul wulud Jodharam, Marwaree, aged 35.
9, Rungoo Kashee, Brahmin, aged 35.

Charge.—Conspiracy (Regulation XVII. of 1828); in having, between 8th October 1853, (corresponding with Ashwin Shood 6th, Shuké 1775,) and 4th October 1855, (corresponding with Bhadrupud Wud 9th, Shuké 1776,) in the Zillah of Ahmednuggur, while a civil action was in progress, brought by the firm of Nainsook Sobharam Agurwala, of Seroor, against prisoners Nos. 1 and 2 (Johurmul and Foujmul), for Rs. 5,000, based on a bond of Rs. 4,900, combined together, and produced in evidence several fraudulently fabricated documents, and committed perjuries to prove them to be true, in order to injure the said firm of Nainsook Sobharam Agurwala in the amount of Rs. 5,000, and to defeat the course of public justice.

Prisoners No. 2 (Foujmul), No. 4 (Manmul), No. 5 (Hameermul), No. 6 (Thanmul), and No. 7 (Oomedmul), are further charged with forgery (Regulation XIV. of 1827, Section XVII. Clause 1st); in having, between 8th October 1853, (corresponding with Ashwin Shood 6th, Shuké 1775,) and 4th October 1855, (corresponding with Bhadrupud Wud 9th, Shuké 1777,) place not known, in the Ahmednuggur Zillah, fabricated, with

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the intent of applying the same to a fraudulent purpose, three letters, purporting to have been addressed to Johurmul and Foujmul by prisoners No. 4 (Manmul), No. 5 (Hameermul), No. 6 (Thanmul), and No. 7 (Oomedmul), and to one of these letters prisoner No. 2 (Foujmul) made a false addition, indicating that he was at Wudolay on the date of the bond.

Prisoner No. 2 (Foujmul) further charged with making a fraudulent use of forged documents, knowing them to be so (Regulation XIV. of 1827, Section XVII. Clause 2nd); in having, on the 30th June 1855, (corresponding with Adhik Ashad Wud 1st, Shuké 1777,) at Nuggur, Zillah Ahmednuggur, produced the above three forged letters in the Nuggur Moonsiff's Court, in support of the plea that, from two days previous to two days subsequent to the execution of the bond on which the suit filed by Nainsook Sobharam in the Ahmednuggur Moonsiff's Court (No. 486 of 1853) was grounded, prisoner No. 2 (Foujmul) was absent at Kurunjee, Ghatserus, and Wudolay.

The prisoners plead not guilty.

J. W. Woodcock, Session Judge.

Finding and Sentence by the Sessions Court.—The particulars of the case are these :—Amurchund, the Mookhtiar of the shop of Nainsook Sobharam, sued Johurmul, the father of Foujmul Luchmondas (prisoners Nos. 2 and 3), and Foujmul (prisoner No. 2), upon a bond dated the 7th Margsheersh Wud, Shuké 1764, (corresponding with Maroo Mitee 7th, Poush Wud, Sumvut 1899,) for Rs. 2,750, being instalments overdue in the Court of Azim Anundrao Kesheo, Moonsiff of Nuggur. The plaint has been filed in the Sessions Court. No. 2, the first defendant (Johurmul), since dead, took a copy of the plaint, but did not give answer ; the second defendant (Foujmul) gave answer, which is recorded No. 3 in the Sessions Court, in which he denied the validity of the bond, and asserted that he had not any reason to

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write it; he also contended that Amurchund was not *boná fide* owner of the firm, and that the shop was the same as intestate; he also advanced many other reasons. The bond upon which the suit was grounded was produced in the Court of the late Moonsiff, Azim Anundrao Kesheo, by the Vakeel, through Amurchund. This bond was afterwards removed by some means out of the Moonsiff's Court, and was never recovered, but a copy of the bond had been kept by Gungaram Bapoojee (witness No. 9), the Vakeel of plaintiff, which is recorded No. 10 in the Sessions Court. During the progress of the suit, Foujmul did not produce any evidence, and the Moonsiff held the bond to have been fully proved from the copy (No. 10); and having entirely rejected the objections raised by Foujmul in his answer (No. 3), the Moonsiff decreed in favour of Amurchund, deducting one instalment Rs. 250, for Rs. 2,500, besides costs.

Johurmul and Foujmul (prisoners Nos. 1 and 2), being dissatisfied with this decree, made an appeal (No. 198 of 1854), which appeal was decided by me, and agreeably to Special Appeal No. 2959 of the Sudder Dewanee Adawlut, decided on the 17th September 1853, which rules that, in order to prove one instalment, it is necessary to sue for the amount of the whole bond. The Court reversed the decree of the Moonsiff, struck the appeal off the file, and remanded the original suit to the lower Court, with directions that, if plaintiff should affix an additional stamp to the plaint, the Moonsiff was to receive whatever evidence the parties might adduce in proof or otherwise of the bond, and pass a fresh decree. Afterwards, Amurchund's Vakeel affixed an additional stamp, and brought his action for Rs. 5,000. This suit was taken up by Azim Sudaseo Bulal, late Extra Moonsiff, who, having held the bond to be proved, decided in favour of the plaintiff. In order to prove the falsity of the bond, Johurmul (prisoner No. 1) and Foujmul (pri-

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soner No. 2) produced the letters marked Nos. 46, 47, and 48, written by different people, by which the latter wished to show that, two days previous to, and two days subsequent to the date of the bond, he (Foujmul) was not at Nuggur, but at different villages outside. The Moonsiff held these letters to be forgeries, and in order to show that on the day the bond was written Foujmul was at Wudolay, the prisoners—who are almost all in some way or other related to each other, one being plaintiff, and another being defendant, and a third being the writer of the bonds, and some being witnesses, and some being securities—did forge two bonds (Nos. 19 and 45), one of which Foujmul wrote, and upon one he signed his name as an attesting witness; and, having brought false suits on these false bonds, they got decrees upon them, and with a knowledge that all these papers, viz. the letters and bonds, were false, they, Johurmul and Foujmul, in order that Nainsook might not get justice, and that they might be benefited, and in order to deceive the Court, recorded several papers, recorded in other cases, the particulars of which are set forth in the decree of the Moonsiff, recorded No. 5; therefore the Moonsiff handed over all the prisoners to the Magistrate, in order that some might be put upon their trial for conspiracy, and others for forgery and making use of forged documents, knowing them to be so; whereupon the Hoozoor Deputy Magistrate, having considered the charges proved against the prisoners, prepared a case against them, which he committed to the Sessions Court; hence is the subject at issue.

Now the Court has to consider whether the copy, No. 10, of the original bond said to have been executed by Johurmul and Foujmul (prisoners Nos. 1 and 2) to Nainsook Sobharam, was really executed by them; if so, at what place it was written, and whether Foujmul (prisoner No. 2) was at that place at the time; and

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whether there is evidence to convict all the prisoners of conspiring together to effect an illegal purpose.

Witnesses Nos. 16, 42, and 43 (Yadowrao, Soobhukrun, and Pundhreenath) depose that they attested the bond at the request of both defendants, viz. Johurmul and Foujmul (prisoners Nos. 1 and 2), and that both of them signed the bond in their own handwriting, in their presenee: thus it is proved that the bond was executed at Nuggur, and that Foujmul (prisoner No. 2) was present at the time of its execution, and signed it.

From the evidence of Bulwuntrao (witness No. 8), Goomashta of Nainsook, who, on the part of his employer, required Johurmul and Foujmul to execute the bond, it is clearly proved that both Johurmul and Foujmul were present when the bond was executed, and that Foujmul was sent to fetch the stamped paper upon which the bond was executed. Under the provisions of Act No. II. of 1855, Section XXVIII., the Court holds the evidence of this single person to be very convincing, as well as that of witness No. 6 (Ramchundra Gunesh), the late Government stamp vendor, who declares that Foujmul (prisoner No. 2) was the man who purchased the stamped paper. Further, to corroborate this fact, there is the entry on the book of sale of stamped paper, extract from which is recorded No. 7; the entry under the name of purchaser is this: "Johurmul wulud Moturmul, Marwaree, 'hustee,' or by the hand of Foujmul, Marwaree, 'wuste,' inhabitant of Nuggur,—date of purchase, 24th December 1842," which corresponds with the Murathee date the 7th Margsheersh Wud, Shuké 1764, and Marwaree date 7th Poush Wud, Sumvut 1899; and the same entry was made by him at the head of the stamped paper.

The fact of the execution of the bond is further fully established by the entry in the 'wuhee' (book) of the shop of Nainsook Sobharam at Ghornudee, an extract from which has been taken by the Court and recorded

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No. 15. This entry, in spite of the needless objections raised by Foujmul, is shown to be quite according to mercantile usage, and to be no false entry.

Witness No. 9 (Gungaram Bapoojee), who was Vakeel on the part of Nainsook in the original suit, Nainsook *versus* Johurmul and Foujmul, deposes that he took a copy of the bond which is recorded No. 10, and it corresponds with the details of the plaint in which the purport of the bond is set forth, and witnesses Nos. 8, 11, and 14 (Bulwuntrao, Hindoomul, and Amrootrao) depose that the bond was written the same day that the stamped paper was purchased, and that, from the time the bond was written up to the date the suit was instituted, Johurmul and Foujmul (prisoners Nos. 1 and 2) both admitted the debt and agreed to pay the money. On this point a mass of evidence would be forthcoming, were the Court to call many respectable and wealthy merchants, correspondents of Nainsook and others, residents of Nuggur, who knew of the existence of the bond, and that Foujmul had agreed to pay the money, but the Court considers the evidence already adduced is sufficient to establish this fact.

It is further proved, from the evidence of witnesses Nos. 36 and 37 (Lukmundas and Jeetmul), that the bond in question was executed on account of an old balance, and that the original interest book (wuhee) of former transactions, extract from which is recorded No. 34, was signed by Johurmul, and they identify his signature on the 34th page of the wuhee. At the time that Nainsook sued Johurmul Koondunmul on that wuhee in the Court of the Principal Sudder Ameen, Anajee Shamrao, now dead, was Vakeel on the part of Nainsook and his son. Witness No. 12 (Gunputrao) produces an envelope, No. 13, of that suit, the writing upon which he declares to be in the handwriting of his father, to show that an instalment bond for Rs. 4,900 was executed by Johurmul and Foujmul on account of

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that suit, to the heirs of Nainsook. From the evidence as above set forth there is a positive certainty that the bond in question was really executed by Johurmul and Foujmul to Nainsook.

The main point on which prisoner No. 2 (Foujmul) rests his plea that the bond in question was fabricated is that the entry of the bond in the 'jumma khurch' of the firm was made fifteen days previous to the date it bears, but the Court remarks that the jumma khurch, which it has examined, has been proved to have been written according to established mercantile usage, that the writer of the jumma khurch seems to have erred at the time of writing the jumma khurch in supposing the Murathee date of the bond to be the Marwaree one, which furnishes ground for the plea of the prisoner as set forth. From this and other evidence adduced in the case, the Court is led to the belief that the aforesaid plea of prisoner No. 2 (Foujmul) is groundless and futile.

From the circumstances set forth, it must follow as a matter of course that the three letters (Nos. 46, 47, and 48), and two bonds (Nos. 19 and 45), produced by Foujmul in the Moonsiff's Court, in order to prove that two days previous to, and two days subsequent to the date of the bond he was not at Nuggur, must be forgeries, and the reasons for holding them to be so and the reasons which led to their production are as follows:—Prisoner No. 2 (Foujmul) left Nuggur, as he says, on the 5th Poush Wud, and went to Kurunjee (twenty-four miles). At what time of the day he reached that place does not appear, but he got there, and the same day he went on to Ghatserus, about four miles, as appears from the letter No. 46 written by Manmul (prisoner No. 4) to Johurmul and Foujmul. On the 6th Poush Wud he was at Ghatserus, as appears from letter No. 47, written by Thanmul (prisoner No. 6) to Johurmul on the 8th Poush Wud, as follows:—

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"Foujmul arrived here on 5th Poush Wud, in the evening, and yesterday, 7th Poush Wud, he went to Wudolay (four or five miles from Ghatserus)." The letter No. 48, written by Hameermul (prisoner No. 5) to Johurmul and Foujmul from Wudolay, is dated the 9th Poush Wud. In it he writes, "Foujmul came here on the 7th Poush Wud"; and at the foot of this letter Foujmul adds in *his own handwriting*,—"I am going to-day to Kura"; and in order to prove the validity of these three false letters, and to strengthen the pretext of his not being at Nuggur during the five days mentioned in the three letters, he, Foujmul, wrote himself a bond, No. 45, dated the 7th Poush Wud, at Wudolay, and also attested a bond, No. 19, on the 8th Margsheersh Wud, together with prisoner No. 5 (Hameermul) mentioned as creditor in the bond No. 45.

The letters Nos. 46 and 48 appear to have been written on old papers with fresh ink, and, with a view to show these letters to have been written a long time ago, viz. 12 or 13 years, they have been rubbed so as to give them an appearance of age; moreover, the writers of the letters are all Marwarees, prisoners at the bar, and bear a close affinity to each other; and it is worthy of remark that every one of these letters is addressed to Johurmul and Foujmul and Luchmondas only, inasmuch as prisoner Foujmul has signally failed to show that he ever before or after received such letters, or that it is usual among the Marwarees to keep such journals of daily proceedings. From the contents of the letters the Court is led to remark the improbability that any one would have kept letters of such trivial importance for so long a period.

All the Marwaree prisoners at the bar are related to each other, as follows:—

Prisoners Nos. 2 and 3 (Foujmul and Luchmondas) are sons of prisoner No. 1 (Johurmul), since deceased;

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Nos. 4, 6, and 7 (Manmul, Thanmul, and Oomedmul) are brothers; and No. 5 (Hameermul) is brother-in-law of prisoner No. 2 (Foujmul). The full particulars of this are entered in paragraphs 10 and 11 of the Moonsiff's decree No. 5.

The bond No. 45 recorded in this case seems to have been written with fresh ink on a piece of paper which bears the appearance of having been taken out of an old account book, and the parties and witnesses to this bond are inhabitants of villages at a distance from each other, and the Court cannot sufficiently wonder at the marvellous assemblage of these individuals, from different villages of different distances, at *one time* and in *one village*, for the purpose of merely executing a bond of a very trifling amount. The Court fully concurs in the remarks made by the Moonsiff on this important point in paragraph 12 of his decree No. 5. The parties named in the bond are wealthy merchants, and this bond is executed merely on account of two candies of 'bajree' (a kind of grain), and the rent of the granary in which the bajree was stored, &c., and it is not likely that they would collect together at one time the persons living at distant villages for the execution of a bond, at Wudolay, of so small a sum. There is no jumma khurch of the bond with the creditor of it, prisoner No. 5 (Hameermul), nor is there any reason to believe that the debtor, Jykison, who is said to be a man of substance, would have been in such straitened circumstances as to execute a bond to prisoner No. 5 (Hameermul) for the trivial sum of Rs. 7-10-0, to be repayed after *six* months, and, moreover, to suffer a complaint to be made in the Civil Court against him for the recovery of such an amount.

After the disappearance of the bond in dispute, a copy of which is recorded No. 10, prisoner No. 2 (Foujmul) filed a suit on the bond No. 45, passed to Hameermul (prisoner No. 5) by Jykison, in behalf of the creditor,

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Hameermul, in whose favour the suit was decided *exparte.* Against this decision prisoner No. 3 (Luchmondas) caused an appeal to be made to the higher Court, and what other motive could prisoner No. 3 (Luchmondas), who is brother to the said Foujmul, have had to get a decision in favour of his relations reversed, but to injure the firm of Nainsook, or, in other words, to defeat the ends of justice, by the production of these false documents in support of the prisoner's plea that Nainsook's bond was fabricated?

It has been sufficiently proved, from the evidence of witnesses Nos. 25 and 26 (Rowjee Babjee and Poondlik Govind), from the 'khatree putra' (exhibit No. 27), and the previous deposition of Jykison, and the decree No. 5, that the prisoners Nos. 2 and 3 (Foujmul and Luchmondas) did produce in support of their defence the suit No. 93 of 1854, and the decree in appeal No. 222 of 1854, obtained upon the false bond No. 45.

In the same manner it has been proved by the evidence of witnesses Nos. 22, 23, 29, 17, and 20 (Keysoo, Luximon, Gungaram, Vitulrao Abajee, Vakeel, and Ambadas Hunmunt, Vakeel), and from the bond No. 19 and receipt No. 30, that the suit No. 345 of the Newassa Court was instituted on a false document. The parties in this suit denied *in toto* the execution of the bond No. 19, and there is strong reason to suppose that this bond must have been fabricated by prisoner No. 2 (Foujmul), the most active agent in this nefarious business; and it is satisfactorily proved from the exhibits Nos. 31, 32, 35, 38, and 39, that prisoner No. 2 (Foujmul) made use of very unfair means to escape from the trammels of the law, and to tamper with the witnesses against him and his associates.

More evidence might have been obtained against the prisoners, but the Court is of opinion that the evidence already recorded is, according to the letter and spirit of

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Act No. II. of 1855, more than sufficient to bring home the charges to them. The Court would further remark that prisoners Nos. 2 and 9 (Foujmul and Rungoo Kashee) have more than once been arraigned on charges of forgery before the Sessions Court, but, by means of their craftiness, they have hitherto succeeded in evading the law. Prisoner No. 9 (Rungoo Kashee) is now undergoing imprisonment in the Criminal Jail on a charge of receiving property, knowing it to be stolen.

The prisoners Nos. 1 and 2 (Johurmul and Foujmul) have signally failed in their attempts to injure the character of Sudaseo Bulal, the Session Judge's Sheristedar, formerly Extra Moonsiff, who brought this case to light, and whose conduct, under the most trying circumstances, and the irritation caused by the bold and unflinching impudence of these two prisoners, has been characterised by ability, zeal, and judgment, and his endeavours to bring to justice these two men in particular, who are the scourge of the town, appear to have been crowned with perfect success; and it would be matter of deep regret to me were they or their companions allowed to escape their well-merited punishment, in which all the respectable inhabitants of the town and Zillah most heartily rejoice.

The documentary evidence alluded to by the prisoners in their defence would not, the Court remarks, be of any avail. The Court, therefore, dispenses with it.

As the prisoner No. 1 (Johurmul) is now dead, the Court does not make mention of him. The prisoners Nos. 2, 3, 5, 7, 8, and 9 (Foujmul, Luchmondas, Hameermul, Oomedmul, Heemutmul, and Rungoo Kashee) are therefore, under the provisions of Regulation XVII. of 1828, Section 1st, found guilty of conspiracy; in that, on some date between the 8th October 1853 (corresponding with the 6th Ashwin Shood, Shuké 1775) and the 4th October 1855, (corresponding with the 9th Bhadrupud Wud,

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Shuké 1777,) during the trial of a suit, No. 486 of 1853, in which Amurchund, the manager of the shop of Nainsook Sobharam, as plaintiff, sued prisoner No. 1 (Johurmul) and prisoner No. 2 (Foujmul) upon a bond, dated the 7th Margsheersh Wud, Shuké 1764, (corresponding with Maroo Mitee, the 7th Poush Wud, Sumvut 1899,) in the Court of the Moonsiff of Nuggur, they, Johurmul and Foujmul, in order to prove that the bond which had been proved to be a true document was forged, did raise an objection that Foujmul, on the day that the bond was written, and the day subsequent to its execution, viz. 7th and 8th, was not at Nuggur, but at the village of Wudolay; they, in order to prove this, did produce in evidence copies of two depositions given by Foujmul, one in case No. 93 of 1854, of the Principal Sudder Ameen's file, in which plaintiff Hameermul (prisoner No. 5) sued one Jykison wulud Kojeeram upon a bond, dated the 7th Poush Wud, of which bond Foujmul (prisoner No. 2) was the writer, and the attesting witnesses were prisoners No. 7 and 8 (Oomedmul and Heemutmul), and they did, moreover, give false evidence, and got a decree passed *ex parte*; and thereafter, by the assistance of Foujmul and Luchmondas, the aforenamed Jykison made a false appeal, No. 222 of 1854, and afterwards gave a false 'razeenama' (agreement); and in case No. 345, wherein the plaintiff was the aforesaid Jykison, and the defendant was Yesajee Patel, now deceased, and the writer of the bond dated the 8th Wud was prisoner No. 9 (Rungoo Kashee), and the attesting witnesses Foujmul and Hameermul (prisoners No. 2 and 5), they, the writer and attesting witnesses, did give false evidence in that case, and got a decree passed *ex parte*; they well knowing that the aforesaid two original suits and appeal were false, in order to cause the firm of Nainsook Sobharam a loss of Rs. 5,000, and that justice might not be given him.

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The prisoners Nos. 2, 4, 5, and 6 (Foujmul, Manmul, Hameermul, and Thanmul) are further found guilty of forgery, under the provisions of Section XVII. Clause 1st, Regulation XIV. A. D. 1827; in having, somewhere between the dates aforesaid, in a case in which Nainsook Sobharam had sued Johurmul and Foujmul on a bond, dated the 7th Margsheersh Wud, Shuké 1764, (corresponding with Maroo Mitee, the 7th Poush Wud, Sumvut 1899), in case No. 486 of 1853, of the Nuggur Moonsiff's Court, which bond had been executed at Nuggur, and had been proved to be a true document, they, in order to disprove the truth of the bond, and to show that, two days before the passing of the said bond, viz. on the 5th Wud, he (Foujmul) had gone from Nuggur to Kurunjee, a distance of twelve 'koss,' and the same day had gone on to Ghatserus, distant two koss from Kurunjee, where he remained that night and the whole of the following day (the 6th), and on the 7th left for Wudolay, about four koss from Ghatserus, where he arrived the same day, and wrote the bond which formed the subject of the aforesaid suit No. 93 of 1854, of the Principal Sudder Ameen's Court, and on the following day he, at the same place, signed, as an attesting witness, the bond in Case No. 345 of 1854, of the Newassa Moonsiff's Court, and on the 9th he left Wudolay for Kura, and, in order to show that all this took place, combined to write the false letters recorded Nos. 46, 47, and 48.

The prisoner No. 2 (Foujmul) is further found guilty, under Regulation XIV. A. D. 1827, Section XVII. Clause 2nd, of making use of false documents, knowing them to be so; in having, on the 30th June 1855, (corresponding with Mitee 1st, Adhik Ashad Wud, Shuké 1777,) in the Court of Azim Sudaseo Bulal, late Extra Moonsiff, with a knowledge that the aforesaid three letters were forged, he, in order to show that the bond in the

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aforesaid suit No. 486 of 1853 was false, and that two days previous to, and two days subsequent to the passing of the bond, he the said (Foujmul) was at Kurunjee, Ghatserus, and Wudolay, produced them in support of his plea as set forth.

Read and recorded the former warrant of the prisoner No. 9 (Rungoo Kashee), issued by the Honorable G. A. Hobart, Acting Assistant Session Judge, on the 26th May 1855, sentencing the prisoner to be imprisoned for the period of one year, with hard labour, and, in a month from the date of imprisonment, to suffer flogging of twenty-five stripes, and to pay a fine of Rs. 150, and, in default, to undergo a further imprisonment with hard labour for one year.

And the Court passes the following sentence:—

Prisoner No. 2 (Foujmul wulud Johurmul), having been found guilty of three charges,—conspiracy, forgery, and making use of forged documents knowing them to be so,—is sentenced, under the provisions of Regulation XVII. A. D. 1828, Section II., and Regulation XIV. of 1827, Section XVII. Clause 3rd, to be imprisoned for the period of four (4) years and nine (9) months, with hard labour, and to pay a fine to Government of five hundred (500) Company's rupees, and, in default of payment, to be further imprisoned for three (3) months, with hard labour, and on his release to find two (2) securities, each in the sum of one thousand (1,000) rupees, for his future good behaviour for two (2) years, and, in default, to suffer that period of imprisonment without labour.

Prisoners Nos. 3, 7, 8, and 9 (Luchmondas wulud Johurmul, Oomedmul wulud Hemraj, Heemutmul wulud Jodharam, and Rungoo Kashee) are found guilty of conspiracy, and sentenced, under the provisions of Regulation XVII. of 1828, Section II., each to be imprisoned for the period of one (1) year, with hard labour, and to pay a fine to Government of three hundred (300) Company's

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rupees, and, in default, to be further imprisoned for three (3) months with hard labour, and prisoner No. 3, on his release, to find two securities, each in the sum of one thousand (1,000) Company's rupees, and prisoners Nos. 7 to 9, on their release, each to find two securities, each in the sum of five hundred (500) Company's rupees, for their future good behaviour for two (2) years, and, in default, each to suffer that period of imprisonment, without labour. The sentence of prisoner No. 9 is to take effect after the expiration of his former imprisonment.

Prisoners Nos. 4 and 6 (Manmul wulud Hemraj and Thanmul wulud Hemraj) are found guilty of forgery, and sentenced, under the provisions of Regulation XIV. of 1827, Section XVII. Clause 3rd, each to be imprisoned for one (1) year, with hard labour, and to pay a fine to Government of three hundred (300) Company's rupees, and, in default of payment, to be further imprisoned for three (3) months with hard labour, and on their release, each to find two securities, each in the sum of five hundred (500) rupees, for their future good conduct for two (2) years, and, in default, to suffer that period of imprisonment, without labour.

Prisoner No. 5 (Hameermul wulud Moteeram) is found guilty of conspiracy and forgery, and sentenced, under the provisions of Regulation XVII. of 1828, Section II., and Regulation XIV. Section XVII. Clause 3rd, to be imprisoned for three (3) years, with hard labour, and to pay a fine to Government of three hundred (300) Company's rupees, and, in default of payment, to be further imprisoned for three (3) months, with hard labour, and, on his release, to find two securities, each in the sum of five hundred (500) rupees, for his future good conduct for two (2) years, or, in default, to suffer that period of imprisonment without labour.

As it appears to the Court that there is not sufficient

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evidence to establish a charge of perjury against the witnesses Nos. 16 and 37 (Yadowrao Bhewrao, and Jeetmul Hookumchund), the bonds entered into by their securities, furnished by order of the Court, are this day ordered to be cancelled, and the witnesses are warned to be cautious in giving their evidence in future.

From the nature of the facts established in this case the Court is of opinion that Jykison wulud Kojeeram, Marwaree, alluded to in this case as creditor in bond No. 45, executed by Hameermul (prisoner No. 5), is equally criminal with the prisoners at the bar, and the reason of his not having been sent up to the Sessions Court with the other prisoners appears, from the proceedings of the committing Authority, to be that he was, during the progress of the preliminary investigation, confined to his bed by serious illness. The Court, therefore, remarks that he should be committed to stand his trial before the Sessions Court as soon as his health has been restored.

Resolution of the Sudder Foujdaree Adawlut.—The prisoners in this case have been convicted of conspiracy, in having combined together to make a false defence in a civil suit against one or more of them, and to that end produced fraudulently fabricated documents, and committed perjuries to prove them.

There is no proof offered of any perjuries; and in regard to the production of the alleged fraudulent documents, the Court do not find either any proof on the record that the prisoners produced them. Certain documents, however, are put on record without being proved, and some of these are admitted by the prisoners as having been written by them, or produced in the suit in question. They would go to show, if believed to be *bonâ fide*, that the prisoner Foujmul (No. 2) was not at Nuggur on the date when, as is alleged, he signed the bond on which he and his father were sued in the Civil Court.

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This bond is not forthcoming, having been lost, as stated in the Moonsiff's Court; but a decree was given for plaintiffs, in the belief that the debt was really due for which such a bond had been passed, from collateral evidence.

The proof in this trial, that Foujmul (prisoner No. 2) was present at the execution of the missing deed, on the date named, consists, 1*st*, of the stamp vendor, who deposes to selling to him the stamp on that day; 2*nd*, of the witness (No. 16) who attested the bond, but could not say that Foujmul was there at the time, neither could he tell the amount; 3*rd*, of No. 42 (Shoobhkurun), another attesting witness, who deposes that Foujmul and his father did execute a bond of the purport of that of which a copy is produced; but he cannot say at what place in Nuggur, although he recollects other particulars minutely. There is likewise the testimony of an absent attesting witness to this bond, which has been recorded No. 43, and relied upon by the Sessions Court, but it was inadmissible, and the Act quoted in no way authorises its reception.

The Session Judge refers to other testimony as proving this fact, but the Court do not consider that the record bears him out; and it is admitted that there is no collateral proof at all of Foujmul's being at Nuggur on the day named.

The amount of proof alluded to may have been sufficient, with collateral evidence to the debt, to satisfy the Civil Court as to the justice of the claim on which it had to adjudicate, but it does not appear to the Court sufficient to condemn men criminally as conspirators; and, without this primary fact of the execution of the bond on the alleged date being clearly established, the falsehood of the defence cannot be assumed as an inevitable conclusion, for there is nothing *primâ facie* incredible in the contents of the letters (exhibits Nos. 46, 47, and 48),

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although the Civil Court has rejected them. With this view of the evidence as to the execution of the absent bond, and looking to the irregular manner in which the documents relied upon as proof in the case have been put in without being proved, as well as the evident *animus* displayed in the case, and the fact that much of the evidence to other circumstances is open to suspicion, the Court come to the conclusion that the prisoners must be acquitted.

The Court regret to observe the Session Judge indulging in such remarks as he has recorded in his judgment in this case, pledging himself to the bad character of the prisoners, and that they are the scourge of the town, and deprecating any alteration in his sentence.

The charges of forgery should not have been brought forward in this case. The main charge of conspiracy included them, and the Session Judge should have elected on which charge to try the prisoners, and not have tried them on both at once.

The alleged loss of a bond for nearly Rs. 5,000 from the Moonsiff's Court during the progress of a suit requires some explanation, which the Judge is requested to furnish separately.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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TANNA.

[Petition of Wasdeo Pandoorung, and another, to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Tanna, E. C. JONES, for Report, on the 1st October 1856.]

Recognisance for Good Conduct.

Petition of Wasdeo Pandoorung to the Sudder Foujdaree Adawlut.—[Praying that an order by the Police Amuldar, requiring him to enter recognisance for good behaviour, might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to report in

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English and Murathee upon the matter set forth in the accompanying petition presented to this Court by Wasdeo Pandoorung and another, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate of Tanna has the honour to report, that a complaint having been lodged by one Mahadeo Bhikajee Pulnitkur, inhabitant of Mohopara, accusing the petitioners of assault, the Police Officer in charge of Talooka Panwell investigated the case, when it was proved by the evidence that, while both parties were wrangling about carrying off the water of a rivulet, Junardhun Pandoorung (one of the petitioners) threatened the complainant, saying, "What do I care for you ?—I will crush you like a bug."

Under these circumstances, the Police Officer in charge directed the petitioners to enter into recognisance, under Regulation XII. Section XLIII. Clause 3rd, to refrain from committing an assault on the complainant for a period of one year, in the sum of Rs. 25, in default, in case of forfeiture, to undergo two months' imprisonment. The complainant and the petitioners are relations. The petitioners appealed against this, and the Magistrate saw no cause for interference with the District Police Officer's decision, and accordingly rejected the petitioner's petition.

The original petition is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause to interfere.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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BELGAUM.

[Case No. 100 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Second Assistant Magistrate of Belgaum, C. F. H. SHAW, on the 19th July 1856. Tried by the Session Judge, A. W. JONES, on the 9th and 10th September 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Ádawlut, by the Session Judge.]

Murder; and Attempt at Suicide.

Prisoner.—Neelee kom Nursia, Lingayet, aged 20.

Charge.—Murder (Regulation XIV. Section XXVII. Clause 1st); in having, on Tuesday, the 8th July 1856, (corresponding with Ashad Shood 6th, Shuké 1778,) in the Inam village of Berkehal, Talooka Chikoree, in the Belgaum Division of the Dharwar Zillah, purposely, and without justifiable or extenuating cause, deprived of life her two children, one a girl four years old, named Nagee, and the other a boy nine months old, by throwing them into a well, in consequence of which the aforesaid two children were then and there drowned.

And at the same time charged with attempt at suicide, thereby committing a branch of her religious law. (Regulation XIV. of 1827, Clause 1st, Section I. paragraph 7, and Clause 2nd); in having, on or about Tuesday, 8th July 1856, (corresponding with Ashad Shood 6th, Shuké 1778,) in the Inam village of Berkehal, Talooka Chikoree, in the Belgaum Division of the Dharwar Zillah, attempted to commit suicide, by throwing herself into a well.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder, and pleads not guilty.

It appears that a man who was searching for honey on the trees round a well in a garden of the village of Berkehal, Talooka Chikoree, observed something moving in the water, which he discovered to be a woman, and as he was a Dher, and could not therefore get into the water himself, he called out, and the owner of the garden

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came to the well, and between them they brought out a woman and two children.

The woman revived after about an hour, but the children were quite dead; and the woman is shown to be the prisoner at the bar. An inquest was held on the bodies of the children, which was proved before the Court, and shows that they had died by drowning.

The prisoner, in her statement, which she has adhered to throughout, admits that she threw herself and her children into this well purposely, owing to the ill-treatment of her husband, and declares that, at last, when on the way from Juglee, where they lived, to Ajra, where her parents lived, they had stopped for the night at Berkehal, and that there too he had beaten her, and given her and her children nothing to eat; and thinking, therefore, that he would kill her some day or other, and that no one would then take care of her children, she determined to end her sorrows at once, and, with her children, went to the well in Dewuna's garden, and threw herself and them into it together. She named several witnesses to prove this ill-treatment: none of them, however, support her story, or will admit that they knew anything of the matter. Admitting, however, that she had suffered some ill-treatment—this is no justification of her conduct, and she must be considered responsible for having occasioned the death of her children.

And the Session Judge, therefore, convicts her of murder; in having, on Tuesday, the 8th July 1856, (corresponding with Ashad Shood 6th, Shuké 1778,) in the Inam village of Berkehal, in the Chikoree Talooka, in the Belgaum Division of the Dharwar Zillah, purposely, and without justifiable or extenuating cause, deprived of life her two children, one a girl four years old, named Nagee, and the other a boy nine months old, by throwing them into a well, in consequence of which the aforesaid two children were then and there drowned.

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As the prisoner is convicted on the first charge, the second need not be gone into.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, the following sentence is passed :—

That you, Neelee kom Nursia, be transported across the seas for the term of your natural life. Subject to the confirmation of the Sudder Foujdaree Adawlut.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the confirmation of the Judges of the Sudder Foujdaree Adawlut, counterpart of my proceedings in the above case, wherein Neelee kom Nursia has been convicted of murder, and sentenced to transportation.

I beg at the same time to state, that the District Police Officer reported he could get no evidence as to her unsoundness of mind, and the Civil Surgeon's letter* shows none was discoverable, while she was under observation by him.

Resolution of the Sudder Foujdaree Adawlut.—Conviction and sentence confirmed.

* *Letter from the Civil Surgeon to the Session Judge.*—In reply to your letter No. 1615, dated 4th ultimo, I have the honour to inform you that prisoner Neelee kom Nursia has been up to this time kept under observation, and that she has not evinced the slightest indication of unsoundness of mind.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

SURAT.

[Petition of Dheria Purbhoo to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Surat, H. LIDDELL, for Report, on the 17th September 1856.]

Failing to Furnish Security for future Good Conduct.

H. Liddell, Magistrate.

Prisoner.—Dheria Purbhoo.

Charge.—Failing to furnish security for his future good conduct.

Finding and Sentence by the Magistrate.—To be imprisoned, without hard labour, for one (1) year, and at the expiration of this sentence, the prisoner to be returned to the Magistrate, for being handed over to the Sursooba of Nowsaree; the prisoner being an inhabitant of His Highness the Gaekwar's Territory.

Petition of Dheria Purbhoo to the Sudder Foujdaree Adawlut.—[Praying that an order for his imprisonment might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to report, in English and Guzerathee, upon the matter set forth in the accompanying petition from Dheria Purbhoo, prisoner in the Surat Jail, which accompanied the Register of Petitions handed up by the Session Judge of Surat on the 1st instant, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning this Precept duly executed, the Magistrate of Surat has the honour to submit the following report, both in English and Guzerathee :—

The petitioner, Dheria Purbhoo, who formerly resided

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in the territories of His Highness the Gaekwar, was arraigned by the British Authorities on criminal charges on several occasions, and punished for the same, as shown in the following table:—

No.	Offence.	Sentence.	Date of Sentence.
1	Theft	10 days' imprisonment..	22nd January 1844.
2	Robbery	2 months' do. with hard labour.	23rd April 1844.
3	Escape from custody.	3 do. do.	11th July 1845.
4	Robbery	6 do. do.	4th June 1856.
5	Theft	20 days' imprisonment..	29th Sept. 1847.
6 & 7	Two cases of robbery with force by night.	Two years' imprisonment with hard labour, and fifty stripes.	7th February 1854.
8	Attempt at do.....		

Lastly, on the night of the 5th June 1856, this individual broke through the house of a goldsmith, Jetta Kulian, and carried away property to the value of Rs. 111-11-0; afterwards, on the night of the 4th July 1856, when on being challenged by a Policeman he did not give any answer, but fled to some distance, and it was with much difficulty, and with the assistance of some people, that the aforesaid Policeman succeeded in apprehending him.

When the preliminary investigation into this case took place, before the Kotwal of Surat, the petitioner admitted his having committed the robbery above alluded to, but on his appearing for his trial before the City Deputy Magistrate he repudiated his confession, whereupon, and in consequence of there being no other evidence, except the two attesting witnesses to the prisoner's confession, and the fact of a box belonging to the prosecutor

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SURAT.

Failing to Furnish Security for his future Good Conduct.

having been found, that Officer, taking into consideration his former convictions (as detailed in the above table), remanded the petitioner, with the view of taking precautionary measures, to the Kotwal, who had been directed by the Superintendent of Police to send him back to Nowsaree (in His Highness the Gaekwar's Territories), on his undergoing the sentence that would be passed on him.

The Superintendent of Police, not concurring in the view of the case taken by the City Deputy Magistrate, requested this Department to inquire again into the matter, upon which the Hoozoor Deputy Magistrate took up the case, who concurred in the opinion expressed by the City Deputy Magistrate, and reported the same to the Magistrate, and on the 8th August 1856 (Regulation XII. Sections XXV. and XXVII. of 1827) ordered the petitioner to find a security for good conduct in the sum of Rs. 200, for the period of one year, commutable to ordinary imprisonment for that period. The order passed by the Hoozoor Deputy Magistrate, for security, was confirmed by the Magistrate.

It was under the circumstances stated above that, on his failing to furnish the required security, the Magistrate, on the 12th August 1856, forwarded the petitioner Dheria Purbhoo to the Jail, at the same time requesting the Session Judge to remand him to this Department on his completing the period of imprisonment, with the view of sending him down to the Nowsaree Sursooba, agreeably to the suggestion of the Superintendent of Police, to which an allusion has been made.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

If the prisoner is not a native of the Zillah, nor a British born subject, he is to be expelled; but the Court do not know of any law for making him over to the Gaekwar Authorities after his imprisonment.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

1856 October 22.

POONA.

[Case No. 73 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, W. M. COGHLAN, on the 6th September 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 15th and 16th September 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, for confirmation.]

Prisoner.—Wasoodeo Oopendra Malow, Shenwee, aged 21.

Attempt to Commit Murder.

Charge.—Attempt to commit murder (Regulation XIV. of 1827, Section XXVI. Clause 1st, and Section I. Clause 2nd); in having, on Monday, the 25th August 1856, (corresponding with Somwar, Shrawun Wud 10th, Shuké 1778,) at about midnight, in the Shookurwar Péta, of the City and Zillah of Poona, in company with another not yet apprehended, entered the house of Gya kom Dewajee Dhun, and having seized her by the throat, &c. with both hands, attempted to strangle her.

Finding and Sentence by the Sessions Court.—The prisoner is charged with attempt to commit murder, and pleads not guilty.

C. M. Harrison, Acting Session Judge.

The prisoner, a vagabond from the Carnatic, with a companion who has since absconded, first visited the complainant Gya, a prostitute, on the evening of Sunday, the 24th ultimo, and slept with her that night, and it was then, apparently, that he became aware of her being possessed of a quantity of gold and silver ornaments and pearls. In the meantime he and his companion having, it would appear, resolved to make themselves masters of these by strangling the owner, the prisoner went to Gya's house on the night of Monday, the 25th August, informed her of his intention of coming to sleep with her again that night, and requested to know whether his companion could be accommodated with

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October 22.

POONA.

Attempt to Commit Murder.

another prostitute. Gya mentioned her next door neighbour to him, and he then went away, returning at 10 or 10½ P. M. with his companion. Jaee, the next door neighbour, was then called, and she and Gya were treated with 'pan sooparee' and 'majoom' by their visitors. The former they ate, but the latter they did not partake of, and after some little time, on Gya's proposing that Narain and her neighbour should withdraw, it was intimated that the latter was not approved of, and suggested that, being late, the former could not return that night to Rastia's Péta, and must accordingly sleep there. Accordingly Jaee having returned to her house next door, Gya describes that the prisoner and his companion went to sleep on her bedding, and that she lay down at their heads. She says that she had gone to sleep, when she was awoke up by hearing them talking, and saw the prisoner leaning over and looking at her; that he subsequently invited her to go into an adjoining room, in order, as she supposed, to have intercourse with her, and, taking advantage of her position, seized her suddenly by the throat with both his hands; that she cried out as loudly as the pressure on her throat would admit; and that the prisoner's companion then entered, and taking her by the hair with one hand, and the chin with the other, twisted her head round. In the meantime Jaee, having heard her cries, came to the outer door of the house, and finding it fastened, and that her knocks were not attended to, raised an outcry, which first brought down his companion, who opened the door, pushed her on one side, and rushed out, and then, on its being repeated, the prisoner also made off in the same way. The latter, however, did not succeed in effecting his escape, for a young man living opposite, who happened to be awake, came out on hearing the outcry in time to see the prisoner jump off the foundation of Gya's house, and immediately followed, and with the assistance of a

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Attempt to Commit Murder.

Sepoy and Havildar of the City Police, succeeded in capturing him.

When arrested, he had nothing on except a 'dhotur' or body cloth, round his loins (one witness says he had a cloth over the upper part of his body, but this is evidently a mistake), two 'bundees' or jackets, one inner and one outer, and a head kerchief belonging to him, being found the same night in Gya's house. The ornaments which had so nearly cost her life were found also the same night by the Havildar of Police in the unlocked box into which she had put them in the prisoner's presence previous to lying down; her 'mungulsootra,' or necklace, which she had on at the time of the assault, was found lying broken on the floor, and water spilt from a 'hundee' or metal vessel which was at Gya's feet at the time, and which she describes having upset when struggling with her assaulters.

The prisoner confessed to the assault before the Foujdar and the Assistant Magistrate, by whom the case has been committed for trial, asserting that he was instigated to perpetrate it by his companion Narain, but he denies that they went to her house with the intention of murdering her and robbing her of her ornaments. The marks of finger nails and swelling found on her throat the next day, as deposed to by the witnesses Ramkrishna and Gungadhur (Nos. 6 and 7), sufficiently prove the murderous nature of the assault, and fully corroborate Gya's statement of what occurred; and the Acting Session Judge cannot doubt that, had it not been for the timely interference of Jaee, it would have terminated in her death.

The prisoner's defence is that he was intoxicated with the majoom he partook of the evening before, and does not know what took place; but, even if such voluntary intoxication could be admitted as extenuating the crime he is accused of attempting to commit, his conduct

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Attempt to Commit Murder.

throughout tends to show that he was sufficiently sensible to know perfectly well what he was about.

He is accordingly convicted of an attempt to commit murder; in having, on Monday, the 25th August 1856, (corresponding with Somwar, Shrawun Wud 10th, Shuké 1778,) at about midnight, in the Shookurwar Péta, of the City and Zillah of Poona, in company with another not yet apprehended, entered the house of Gya kom Dewajee Dhun, and having seized her by the throat, &c. with both his hands, attempted to strangle her.

And after duly considering the nature of the crime, the measure of the guilt attempted and committed, and the punishment provided for the same by Regulation XIV. of 1827, Section XXVI. Clause 4th, and Section I. Clause 2nd, the following sentence is passed:—

That you, Wasoodeo Oopendra Malow, be transported beyond seas for the term of your natural life. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

* * * * * * * *

The Court considers the witnesses Mahadoo bin Ramjee Malwudkur, and Jaee kom Rama Buduk, through whose instrumentality the prisoner was apprehended, worthy, the former of a reward of Rs. 10, and the latter of Rs. 25, which the Collector will be requested to pay them, under the provisions of Regulation XII. of 1827, Section XXXIII. Clause 2nd.

Resolution of the Sudder Foujdaree Adawlut.—Conviction and sentence confirmed.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges. 1856 October 23.

AHMEDNUGGUR.

[Petition of Gungaram wulud Suwaeechund, Marwadee, to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Ahmednuggur, F. S. CHAPMAN, for Report, on the 1st October 1856.]

Prisoner.—Gungaram wulud Suwaeechund, Marwadee.

Suspicious and bad Character.

Charge.—Suspicious and bad character.

F. S. Chapman, First Assistant Magistrate.

Order by the First Assistant Magistrate.—To furnish two securities, each in the sum of fifty (50) Company's rupees, commutable to six (6) months' imprisonment, for his future good behaviour for five (5) years, or, in default, to be imprisoned for that period without labour, and at the end of the first eleven months of each year to return his warrant to the Magistrate, in order that the sanction of the Sudder Foujdaree Adawlut might be obtained for the further detention of the prisoner.

Petition of Gungaram wulud Suwaeechund, Marwadee, to the Sudder Foujdaree Adawlut.—[Praying that the order for his imprisonment might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to report whether there is any objection to adopt the course suggested by petitioner.

Return by the First Assistant Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In reply to this Precept, the First Assistant Magistrate in charge has the honour to report that, as the petitioner is not a native of this Zillah, there would appear to be no legal objection to complying with his petition to have the order demanding security substituted by one expelling him from the Zillah.

The petitioner is a notorious offender, having been convicted no less than four times within the last five

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AHMEDNUGGUR.

Suspicious and bad Character.

years; and the reason for not resorting to expulsion in his case was, because it was deemed inexpedient to burden the adjacent Zillahs with such a character.

The original petition is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

1856
October 23.

BELGAUM.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Notice issued by the Magistrate of Belgaum, G. B. SETON KARR, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 7th October 1856.]

Notice by the Magistrate.

Translation of Notice.—Under the provisions of Section XIX. Regulation XII. of 1827, Notice is hereby given, that naked processions and hook-swinging at the Yelama temple, in Talooka Purusgur, in the Belgaum Collectorate, are prohibited. Disobedience of this Injunction will be punished according to law.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—With reference to your letter to Government in the Judicial Department, No. 1885, of the 13th August last, on the subject of hook-swinging, I have the honour to forward to the Court of Sudder Foujdaree Adawlut a copy and translation of a Notice issued by me, prohibiting naked processions and hook-swinging at the Yelama temple, in the Purusgur Talooka of this Collectorate.

Resolution of the Sudder Foujdaree Adawlut.—Recorded.

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CASES

DISPOSED OF BY THE

SUDDER FOUJDAREE ADAWLUT OF BOMBAY,

IN NOVEMBER 1856.

1856 November 5.

SHOLAPORE.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Petition of Wamun Jeewajee, and two others, to the Sudder Foujdaree Adawlut. Referred to the Session Judge of Sholapore, T. A. COMPTON, for Report, on the 14th May 1856.]

[See pages 848 to 850, Vol. V., and pages 192, 193, 295, and 489, Vol. VI., for previous proceedings in this Case.]

Petition against the Proceedings of the Session Judge.

Letter from the Magistrate to the Session Judge.—In reply to your letter No. 1049, dated the 26th instant, I have the honour to inform you, that on a perusal of the depositions forwarded by you with your letter No. 312, dated 13th March last, in support of a charge of resistance to legal process, or one of conspiracy, I am of opinion that neither charge will lie against the persons mentioned in your letter; and I therefore do not consider it necessary to take any further steps in the matter.

The substance of the depositions is, that the persons named threatened one of the witnesses, in company with the Deputy Jailor, that "he had been in jail once before, and that if he gave evidence in the case in which he was concerned, they would cause him to be imprisoned again."

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November 5.

SHOLAPORE.

Petition against the Proceedings of the Session Judge.

Section XXV. of Regulation IV. of 1827 states clearly that "resistance to the process of a Court, or an Officer of a Court in the performance of a duty, if perpetrated by force of a nature apparently within the offender's power to execute," &c. The witness threatened was not an Officer of the Court, nor was the threat held out to him a threat of force, nor was it a threat apparently within the power of the person using it to carry into execution; so that I think there can be no doubt that this Regulation does not apply.

As regards the charge of conspiracy, I think it is equally unsupportable. There is nothing whatever in the depositions to justify the belief that the men who threatened the witness had combined or conspired together to injure him. A conspiracy infers some previous consultation and plan to effect an object. There is nothing to show that such had been the case in the present instance; on the contrary, had the accused decided upon injuring the witnesses by a conspiracy to cause his imprisonment, they would hardly have openly expressed their intention in the public street, in the hearing of many persons.

Allowing the depositions forwarded by you to contain nothing but the truth, all that I can gather from them is that the accused, interested in the cause of their friend (assuming him to be so) on trial before you, used angry expressions towards one of the witnesses against him.

The conduct of the accused may have been unseemly and improper, but angry words and empty threats do not, in my opinion, form valid grounds for criminal prosecutions. I must, therefore, decline to pursue the investigation any further, or call upon the accused to answer the charges preferred against them in your letter above referred to.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The Session Judge has the honour, in acknowledging the receipt of the Sudder

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1856 November 5.

SHOLAPORE.

Petition against the Proceedings of the Session Judge.

Court's extract from proceedings of the 1st instant, respectfully to explain, for the information of the Judges, that he did not consider the case against the petitioners a "petty" one, as he charged them with a "combination to defeat the course of public justice." The Magistrate, for the reasons assigned in the accompanying copy of his letter No. 556, of 29th September 1856, has declined to prosecute the petitioners, and ordered their release; but the Session Judge is quite unable to concur with the Magistrate's reasoning that "threatening witnesses" about to give evidence against one's friend is not an offence calling for punishment.

The Session Judge is very humbly, but decidedly, of opinion, that whether the petitioners were guilty or not, the charge, so strenuously persisted in by him, ought not to have been quashed without investigation, but the accused placed upon their trial, and allowed to stand or fall by the evidence against them. He cannot agree with the Magistrate that using "angry expressions" towards witnesses, and threatening them with imprisonment if they dare to give evidence, is not intimidation with a view to defeat the course of public justice.

It must be borne in mind, the Session Judge humbly submits, that the complainant went to point out the witnesses against the Sheristedar; the latter begged that some of his friends might accompany the complainant to see that no improper influence was exercised; and the petitioners were the friends who were so employed by him, and who exerted their influence in his favour, of course.

As the Session Judge, however, is precluded from trying the petitioners, and the Magistrate declines to do so, he presumes nothing more can be done in the matter; but, as one of the offenders is the son of the Treasurer in the Collector's Office, the Session Judge is humbly of opinion that it would have been better if the evidence

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had been taken, and the charge had not been quashed *in limine.*

Resolution of the Sudder Foujdaree Adawlut.—To be recorded.

1856 November 6.

KAIRA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 120 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate of Kaira, L. ASHBURNER, on the 11th August 1856. Tried by the Session Judge, A. B. WARDEN, on the 20th and 25th August 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Wilful Perjury.

Prisoner.—Moteram Nathjee, Brahmin, aged 30.

Charge.—Wilful perjury; in having, on or about 4th August 1856, (corresponding with Shrawun Shood 4th, Sumvut 1912,) before Mr. Ashburner, First Assistant Magistrate of Kaira, wilfully made a false statement on solemn affirmation, to the effect that only Hindoos and not Musulmans were in the habit of putting up at the 'dhurumsala' of Metabhae Gulal, in the village of Kupurwunj; whereas he (prisoner) was well aware that the dhurumsala was a public one, which both Hindoos and Musulmans were in the habit of frequenting; this point being of importance on the trial of certain Hindoos who were on trial for assaulting the Babé of Balasinore, and attempting to turn him out of the dhurumsala, on the ground that he was defiling it by killing goats and fowls in it; prisoner thereby rendering himself amenable to the provisions of Regulation XIV. Section XVI. Clause 1st, of 1827, and Act V. of 1840.

Prisoner pleads not guilty.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with wilful perjury.

The evidence of the witness Gunpûtram (No. 4) proves that the deposition (No. 5) which contains the

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1856 November 6.

KAIRA.

Wilful Perjury.

alleged false statement was given by the prisoner on solemn affirmation before the First Assistant Magistrate. The alleged false statement was that he (prisoner) was well aware that only Hindoos put up in the dhurumsala of Metabhae Gulal, and that he knew that no Musulmans were ever put in it. That the said assertion was false is proved by the evidence of witnesses Jetabhae and Boodurbhae (Nos. 6 and 7), who have deposed that both Hindoos and Musulmans put up in the said dhurumsala; and that there being a temple of Hunuman in the said dhurumsala, all the Hindoos of their village, which is the prisoner's village, resort to it. Had the prisoner, when being examined as a witness, merely deposed that Hindoos put up in the temple, and that he was not aware of Musulmans resorting to it, it would be difficult to convict him of perjury; but as he most positively denied that Musulmans put up in it, and has not attempted to make good his assertions, whereas the evidence of the two foregoing witnesses proves his assertions to be false, the Court considers the charge fully proved. Prisoner is accordingly found guilty of perjury; in having, on or about 4th August 1856, (corresponding with Shrawun Shood 4th, Sumvut 1912,) before Mr. Ashburner, First Assistant Magistrate of Kaira, wilfully made a false statement on solemn affirmation, to the effect that only Hindoos and not Musulmans were in the habit of putting up at the dhurumsala of Metabhae Gulal, in the village of Kupurwunj; whereas he (prisoner) was well aware that the dhurumsala was a public one, which both Hindoos and Musulmans were in the habit of frequenting; this point being of importance on the trial of certain Hindoos, who were on trial for assaulting the Babé of Balasinore, and attempting to turn him out of the dhurumsala, on the ground that he was defiling it by killing goats and fowls in it.

After taking into consideration the nature of the offence

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KAIRA.

Wilful Perjury.

proved against you, prisoner Moteeram Nathjee, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XVI. Clause 2nd, of 1827, and Act V. of 1840, the sentence of the Court is, that you be imprisoned and kept to hard labour for two (2) months.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The statement which the prisoner is accused of making falsely is not proved to be false, and he alleges that he spoke according to his knowledge of facts.

The conviction of perjury must be annulled.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—Prisoner is alleged to have stated that Musulmans were not allowed to put up in Metabhae's dhurumsala in Kupurwunj; and it is further alleged that he has committed wilful perjury, inasmuch that he knew that this statement was false in fact.

I do not consider that the evidence of witnesses Nos. 6 and 7 proves that the prisoner knew that Musulmans were permitted to put up in the dhurumsala; these witnesses, moreover, do not, in my opinion, prove that Musulmans were allowed to do so, and, therefore, there is no evidence on the record to show that the statement is false. Under these circumstances, I consider that the conviction must be annulled.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoner to be discharged.

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Present, { WILLIAM HENRY HARRISON, / ROBERT KEAYS, } Puisne Judges.

1856 November 6.

SHOLAPORE.

[Case No. 55 of the Calendar of the Sholapore Sessions Court for 1856. Committed by the First Assistant Magistrate, J. F. ARMSTRONG, on the 23rd August 1856. Tried by the Session Judge, on the 28th, 29th, and 30th August 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Robbery by Night, without Force; & Receiving Property, knowing it to have been Stolen.

Prisoners.—No. 1, Rugoonath Ramchunder *alias* Dada, Brahmin, aged 35.
2, Dhondo Shreeput *alias* Baba, Brahmin, aged 18.
3, Nursinuh Venktesh *alias* Rowjee, Brahmin, aged 20.
4, Annajee Bapoojee, Brahmin, aged 30.

Charge.—Robbery by night, without force (Regulation XIV. of 1827, Section XXXVII. Clause 4th); in having, on the night of Sunday, the 25th May 1856, (corresponding with Wuishak Wud 6th, Shuké 1778, Aditwar,) in the village of Roogee, Talooka Hipurga, in the Zillah of Sholapore, entered the house of Tarabae kom Shreeput, and dug up with a pickaxe from the ground, where they were buried, Rs. 349 in cash, gold and silver ornaments valued at Rs. 91, and a 'lota'; together amounting in value to Rs. 441.

Prisoners Nos. 1, 3, and 4 (Rugoonath, Nursinuh, and Annajee) charged on a second count, under Clause 1st, Section XLI. Regulation XIV. of 1827, with receiving property which they knew to have been stolen; the prisoner No. 1 (Rugoonath) in having, between Sunday the 25th May and Monday the 14th July 1856, (corresponding with Wuishak Wud 6th, Shuké 1778, Aditwar, and Ashad Shood 12th, Shuké 1778, Mungulwar,) in Talooka Hipurga, Zillah Sholapore, received a pair of gold ear ornaments valued at Rs. 8, and two silver bracelets and a

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SHOLAPORE.

Robbery by Night, without Force; & Receiving Property, knowing it to have been Stolen.

T. A. Compton, Session Judge.

silver waistbelt valued at Rs. 15-4-0, total Rs. 23-4-0, knowing them to have been stolen from the complainant, Tarabae kom Shreeput; the prisoner No. 3 (Nursinuh) in having, in the Talooka of Hipurga, Zillah Sholapore, received two silver bracelets valued at Rs. 8-12-0, and Rs. 16 in cash; and the prisoner No. 4 (Annajee) in having received Rs. 18 in cash,—both well knowing that they had been stolen from the above Tarabae kom Shreeput.

Finding and Sentence by the Sessions Court.—The prisoners Nos. 1, 2, 3, and 4 (Rugoonath Ramchunder *alias* Dada, Dhondo Shreeput *alias* Baba, Nursinuh Venktesh *alias* Rowjee, and Annajee Bapoojèe) are charged with robbery by night, without force; and Nos. 1, 3, and 4 (Rugoonath, Nursinuh, and Annajee), on a second count, with receiving property knowing the same to have been stolen.

The prisoner No. 2 (Dhondo) pleads guilty; Nos. 1, 3, and 4 (Rugoonath, Nursinuh, and Annajee) not guilty.

The complainant Tarabae (No. 4), who is the sister-in-law of the prisoner No. 1 (Rugoonath), the mother of the prisoner No. 2 (Dhondo), and related to the other two prisoners (Nursinuh and Annajee), left her home about three months ago to visit her father, who was very ill at Aheerwaree, her son the prisoner No. 2 (Dhondo) remaining behind in charge of her house; she (complainant), however, taking with her the key of the rooms in which her valuables and money, &c. were locked up.

About a month afterwards she heard that a hole had been made in the wall of her house, and sent her brother-in-law, Balapa, to look after her property, who at once discovered that she had been plundered of all her ornaments and money, to the value of about Rs. 441.

As her son, prisoner No. 2 (Dhondo), would not come to her when she sent for him (on her return to the village), she suspected him of the robbery, and of having

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been aided by the other prisoners, who have long been at enmity with her regarding the disposal of her deceased husband's property; and on the prisoners being apprehended, Nos. 1 and 2 (Rugoonath and Dhondo) at once confessed the robbery, and, in consequence of their confessions, Rs. 49-8-0 in cash, four gold ornaments, and three silver ditto, were traced and recovered.

The prisoner No. 1 (Rugoonath) confessed before the District Police Officer of Hipurga that the prisoner No. 2 (Dhondo) told him that he had stolen some of his mother's property, and asked him what he was to do; upon which he (prisoner No. 1, Rugoonath) advised him to make a hole in the wall of the house to divert suspicion from himself, and make it appear that the robbery had been committed by regular thieves; that he prisoner No. 1 (Rugoonath), with his servant Ludema (witness No. 5), and the prisoner No. 3 (Rowjee) took a pickaxe that night and made a hole in the wall of the complainant's house; that they then entered the house by the door and stole some of the ornaments produced in evidence, the prisoner No. 4 (Anajee) remaining outside during the robbery.

He retracted this confession before the First Assistant Magistrate, and adheres to his denial before the Court; but the witnesses Bhimajee and Ramajee (Nos. 10 and 11) prove that his confession was freely and voluntarily made; his servant Ludema (witness No. 5) proves that he (prisoner No. 1) woke him up one night about 11 o'clock, and made him take a pickaxe to the complainant's house and make a hole in the wall, prisoners Nos. 3 and 4 (Nursinuh and Anajee) being with them; the witness Shiningowa (No. 6), who lives in the front part of complainant's house, proves that three men came to the house one evening (two of whom she recognised to be the prisoners Nos. 1 and 4 (Rugoonath and Anajee), and went into the inner rooms; and before the District Police

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Officer she deposed that all four prisoners went into the house, that they lighted a lamp, and that she heard them talking together inside; Venktesh Roodro (witness No. 7), who lives at a village some three coss off, proves that the prisoner No. 1 (Rugoonath) brought him the silver bracelets and waist girdle (now in Court), and asked him to take care of them for him till he should return from Almella; Ramowa (witness No. 8), kept mistress of prisoner No. 1 (Rugoonath), deposes that he gave her one of the two pairs of 'guntees,' or gold ear-ornaments now in Court, that the prisoners Nos. 1, 3, and 4 (Rugoonath, Nursinuh, and Anajee) were talking in her house one night till 11 o'clock, that they then went out and did not return till 3 A. M., and that she then saw the bracelets and waistbelt in the hand of prisoner No. 1.

The prisoner No. 2 (Dhondo) fully confesses having committed the robbery at the instigation of the prisoners Nos. 1, 3, and 4 (Rugoonath, Nursinuh, and Anajee), and with their aid and assistance, and states that they incited him to it by promising to get him married if he would point out his mother's property; that the prisoner No. 1 (Rugoonath) opened the padlock of the room containing the valuables, and dug up with a pickaxe the floor where they were buried, while the prisoner No. 3 (Nursinuh) kept watch outside; that prisoner No. 1 (Rugoonath) took the money, he (prisoner No. 2, Dhondo) the gold ornaments, and prisoner No. 4 (Anajee) the silver one; that prisoner No. 1 (Rugoonath) kept Rs. 282 in cash, the silver waistbelt and bracelets, giving him (prisoner No. 2, Dhondo) the other ornaments and Rs. 57 in cash, of which he lent Rs. 18 to prisoner No. 4.

The prisoner No. 3 (Nursinuh) admitted before the District Police Officer that he received [illegible] silver bangles and Rs. 16 in cash from the prisoner No. 2, though he knew that there had been a robbery in the complainant's house. He, like the prisoner No. 1, now repudiates

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this statement, and asserts that it was extorted from him; but he produced to the Authorities Rs. 8 of the amount, and he must have known that the prisoner No. 2 (Dhondo), a mere boy, not engaged in trade or any occupation, could not have acquired the money or ornaments honestly.

The prisoner No. 4 (Anajee) at first admitted that he borrowed Rs. 18 from the prisoner No. 2 (Dhondo), but he now denies this, though he acknowledges having produced the money to the Police Amuldar. There can be very little doubt that both he and the prisoner No. 3 (Nursinuh) were concerned in the robbery, and, at any rate, received the stolen property, well knowing how it had been obtained.

The prisoners Nos. 1 and 2 are convicted, on their own confessions and the evidence against them, of robbery by night, without force; in having, on or about the night of Sunday, the 25th May 1856, (corresponding with Wuishak Wud 6th, Shuké 1778, Aditwar,) in the village of Rooge, Talooka Hipurga, in the Zillah of Sholapore, entered the house of one Tarabae kom Shreeput, widow, and dug up from the floor of a room gold and silver ornaments and money to the aggregate value of Rs. 441.

Prisoners Nos. 3 and 4 (Nursinuh and Anajee) are convicted, on the evidence against them, of receiving property which they knew to have been stolen; in having, in the Talooka of Hipurga, in the Zillah of Sholapore, in the month of May or June 1856, Wuishak or Jésht Mas, Shuké 1778 (precise time and place unknown), received from the prisoner No. 3 (Nursinuh) two silver bracelets, valued at Rs. 8-12-0, and Rs. 16 in cash; and the prisoner No. 4 (Anajee) Rs. 18 in cash; both well knowing that they had been stolen from their relative, the complainant Tarabae kom Shreeput, widow.

After a mature consideration of the offence which the

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prisoners have committed, together with the circumstance that the prisoner No. 2 (Dhondo) appears to have been led away by his uncle the prisoner No. 1 (Rugoonath) and the other prisoners, and the nature of the punishment assignable thereto under the provisions of Clause 3rd, Section XXXVII., and Clause 1st, Section XLI. Regulation XIV. of 1827, the Court proceeds to pass the following sentence :—

That you, prisoners No. 1 (Rugoonath Ramchunder), No. 2 (Dhondo Shreeput), No. 3 (Nursinuh Venktesh), and No. 4 (Anajee Bapoojee), be severally imprisoned and kept to hard labour ;—No. 1 for two (2) years, and to pay a fine of one hundred (100) rupees, or to suffer six (6) months' additional imprisonment, with hard labour; Nos. 2 and 4 for six (6) months each ; No. 3 for one (1) year.

Resolution of the Sudder Foujdaree Adawlut.—As regards prisoners Nos. 1 and 2, the Court see no cause to interfere. Prisoners Nos. 3 and 4, the Session Judge records, are convicted on the evidence against them. The only matter on the record to show their connection with the crime, however, is the statement of prisoner No. 2, and statements alleged and not proved to have been made by themselves, and recorded by the Session Judge for their defence, although denied by them and asserted to have been made under coercion. As this is not proof, and there is really no evidence at all against them, these two prisoners are acquitted and to be discharged.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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RUTNAGHERRY.

[Case No. 11 of the Criminal Return of the Magistrate of Rutnagherry. Tried by the First Assistant Magistrate, G. SCOTT, on the 22nd September 1856. Reviewed by the Acting Session Judge of the Konkun, H. P. ST. G. TUCKER, on the 20th October 1856, on appeal, and proceedings submitted to the Sudder Foujdaree Adawlut for final decision.]

Serious Assault.

Prisoner.—Gopal bin Apa Sadey, Gabee, aged 27.

Charge.—Serious assault (Regulation XIV. of 1827, Section XXIX. Clause 1st); seeing that he, the said prisoner, did, on the evening of 10th August 1856, (corresponding with Shrawun Shood 9th, Shuké 1778,) at his house in the village of Veshwee, Turuf Bankote, Talooka Sooverndroog, having bound the complainant Gunga, his wife, to a post, brand her on the stomach with a hot 'kaviltha' (iron instrument for turning 'chupatee'), thereby inflicting a wound about four inches long and two broad, and causing her great bodily suffering, and causing a severe shock to her mental feelings.

The prisoner pleads guilty.

G. Scott, First Assistant Magistrate.

Finding and Sentence by the First Assistant Magistrate.—This prisoner was tried by the Third Assistant Magistrate, but as the punishment awarded by him was, the First Assistant Magistrate in Charge considered, inadequate, his proceedings were quashed. *

The prisoner acknowledges his guilt, of which there is ample proof. Had the prisoner, in the heat of passion, snatched up the iron and struck his wife with it, some

* The Third Assistant Magistrate sentenced the prisoner to three months' imprisonment with labour, and seven days' solitary confinement, and forwarded the case to the First Assistant Magistrate in Charge for confirmation. On receipt of the case, it appeared to the First Assistant Magistrate in Charge that the sentence passed on the prisoner was too lenient; cancelled it, and wrote to the Third Assistant Magistrate to forward to him the prisoner and witnesses.

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allowance might have been made; but prisoner in the most deliberate manner ties his wife to a post, after having taken her clothes off, heats an iron, and brands her in the most cruel manner on the stomach. Had it not been for the courageous conduct of the boy Narayen, there is no saying what other injuries he would have inflicted on the complainant. From the scar left on the complainant's stomach, it is evident that the iron must have been pressed in heavily. The only provocation was that his wife refused to rub his feet; and the prisoner seems to think it very hard, as his wife cost him some Rs. 200, he may not brand her with impunity. The prisoner Gopal Sadey is found guilty, and sentenced to one (1) year's imprisonment, with hard labour, from this date, and likewise to receive thirty (30) stripes, to be inflicted after the expiration of the first fifteen days of the term of imprisonment. (Regulation XIV. Section XXIX. Clause 1st, of 1827.)

H. P. St.G. Tucker, Acting Session Judge.

Review by the Sessions Court on Appeal.—The prisoner pleaded guilty, and the sentence is not more severe than the offence deserved. The First Assistant Magistrate in Charge has, however, sentenced the prisoner to receive thirty stripes at one time, which, under Regulation XIV. Section VIII. of 1827, is illegal. I therefore forward the case to the Court of Sudder Foujdaree Adawlut, in order that the number of stripes may be reduced to twenty-five, the largest number that may be inflicted on a single occasion, or that the flogging may be divided into two portions, should that Court deem this alteration necessary.

Letter from the Acting Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—For the reasons contained in the annexed extract from my proceedings of this day's date, I have the honour to forward the proceedings held before the Magisterial Authorities of Rutnagherry in the case of Gopal bin Apa Sadey, which were called for by me on petition, and request you will be so good as to sub-

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mit the same for the final orders of the Judges of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—The Court find that the whole sentence is illegal. As the Third Assistant Magistrate first sentenced the prisoner, the Magistrate cannot annul the sentence and enhance the punishment; he could only commit the prisoner for trial.

The sentence is therefore annulled.

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Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

Sholapore.

[Recommendation of the Magistrate of Sholapore, W. A. Goldfinch, of the 13th October 1856, to the Sudder Foujdaree Adawlut, for the detention of Shetia wulud Nimba for a further period of four years, in default of furnishing Securities for his Good Conduct.]

Precautionary Measures.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to report that one Shetia wulud Nimba, Mang, a notorious character in this part of the country, was sent to Jail on the 5th of November 1855, in default of security for good conduct which was required of him to the extent of two securities for Rs. 200 each, for the space of five years.

The details of the case in which his conviction of gang robbery with force by the Sessions was annulled, are contained in pages 70 to 76 of Morris's Reports for July 1855.

The period of one year to which my authority extends having nearly expired, and as I am decidedly of opinion that the liberty of this man is incompatible with the peace of the country, I request the sanction of the Judges to his detention for a further period of four years.

Resolution of the Sudder Foujdaree Adawlut.—The necessary sanction may be given for one year, and the Magistrate should make a further reference at its expiration, if necessary.

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NASSICK.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case of Ramkrishn Sudasew, and two others. Tried by the Assistant Magistrate of Nassick, S. M. PELLY, on the 24th May 1856, Confirmed by the Joint Magistrate of Nassick, A. R. GRANT, on the 2nd June 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Failure to Furnish Security; and Obstructing the Course of Justice.

Prisoners.—No. 1, Ramkrishn Sudasew Chundratree, Brahmin, aged 44.
2, Govind Wishwanath, Brahmin, aged 25.
3, Keshow Bhut bin Ram Bhut, Brahmin, aged 33.

Charge.—The above prisoners are placed at the bar, and are informed that as they, this day, at Nassick, in the Office of the Assistant Magistrate of Nassick, obstructed justice, by waving about their hands and making use of exciting language in a loud tone of voice, by all of which proceedings the Assistant Magistrate was prevented for some time from discharging his duty, they are, in conformity with Act XXX. of 1841, Clause 1st, amenable to punishment.

Prisoners plead not guilty.

S. M. Pelly, Assistant Magistrate.

Finding and Sentence by the Assistant Magistrate.—An order was given by the Assistant Magistrate, a few days ago, for the construction of a 'bundhara' in the river, and not only was this order opposed by some ill-disposed people, but two of them pulled down a temporary dam which had been constructed. These men were ordered to give security that they would not again offer any obstruction to the work, and, on refusing to do so, the Assistant Magistrate informed them that if they would not give security for their conduct they should be sent to Jail.

A large crowd of people, mnay of whom had been sent by the Joint Police Officer of Nassick, as being op-

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posed to the construction of the bund, accompanied the delinquents to the Assistant Magistrate's Office. Here they behaved in a most disorderly and uproarious manner (notwithstanding that it was pointed out to them that no injury could possibly arise to any one from the proposed work, while it would benefit many, as also that, if not found to answer the expectation formed of it, arrangements had been made for its immediate removal); and if they did not meditate a rescue, which seemed not unlikely, they evidently thought that, by their numbers, noise, and gestures, they would succeed in obstructing the Assistant Magistrate's proceedings by intimidating him. The three prisoners being observed by the Assistant Magistrate as more uproarious and insolent than the rest, they were by his orders secured, and told that they should be punished for their conduct.

They have accordingly been placed at the bar, and the foregoing evidence recorded against them.

Prisoners Nos. 1 and 3 first said that they had no proof to offer. When signing their names they said they would call witnesses, but as they did not specify any particular individual, and as any one they were likely to call belonged to the same uproarious party as themselves; as, moreover, the Assistant Magistrate saw them in the act of committing the offence with which they are charged, it is not considered necessary to take any further evidence.

The prisoners, being guilty, are each sentenced to pay a fine of twenty (20) rupees, or, in default, to undergo one (1) month's imprisonment, with hard labour, in the Nassick Jail. (Act XXX. of 1841, Clause 1st.)

A. R. Grant, Joint Magistrate.

Confirmation by the Joint Magistrate.—The Joint Magistrate, having reviewed this case on appeal, is of opinion that the charge is clearly proved against the prisoners, and confirms the conviction and sentence recorded against them.

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NASSICK.

Failure to Furnish Security; and Obstructing the Course of Justice.

Precept issued by the Sudder Foujdaree Adáwlut to the Magistrate of Ahmednuggur.—The Magistrate is to be requested to report whether the duty in which the Assistant Magistrate was obstructed was hearing complaints against the erection of a bund, objected to, apparently, by some persons at Nassick, and whether the petitioners had been summoned on the occasion, or if, being present, they were asked questions by the Assistant Magistrate on the subject. The Magistrate will also be pleased to certify the proceedings in which his Assistant was engaged when the obstruction of justice took place.

Return by the First Assistant Magistrate in Charge of Ahmednuggur to the Precept of the Sudder Foujdaree Adawlut.—The First Assistant Magistrate in Charge has the honour to certify the required proceedings. They relate, as the Court will observe, to a preliminary investigation into a charge of adultery.

From the following extracts from a letter from the Assistant Magistrate, No. 38, of the 18th instant, it will be seen that the principal obstructions occurred while the Assistant Magistrate was demanding security from two persons who had forcibly destroyed certain property.

"In reply I have the honour to state, 1*st*, that I was not obstructed in hearing complaints against the erection of the bund; 2*nd*, that the petitioners had not been summoned by me on the occasion; and lastly, that, being present, they were asked no questions by me on the subject.

"The work on which I was engaged at the time when the petitioners and a considerable number of others came to my Office, was an inquiry into an alleged case of adultery, the papers connected with which I have the honour herewith to forward. Their presence prevented me for some time from proceeding with the case, but this was not a matter of much importance. On its completion, I proceeded to arrange about the security required to be furnished by two people who had pulled down a

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temporary dam erected by my order, when, as shown in the proceedings in the case of Keshowrow bin Rambhut and others, all the crowd commenced behaving in a most disorderly and uproarious manner, and it was not till I had picked out three of the most disorderly, and said that they should be punished, that the others would leave my Office, or be at all quiet.

"There can be no doubt that their conduct was most disrespectful and uncalled for, and that they thought they would thus intimidate me from performing what I considered my duty, both as to the construction of the bund and the taking security from those who had already offered physical opposition.

The two men having consented before me to give the required security, no written proceedings were kept, but the men were sent under charge of a peon to the Joint Police Officer of Nassick with a message to that effect.

Resolution of the Sudder Foujdaree Adawlut.—The petition is rejected.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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BELGAUM.

[Notice issued by the Magistrate of Belgaum, G. B. S. KARR, and referred by that Officer to the Sudder Foujdaree Adawlut on the 7th October 1856.]

Notice by a Magistrate.

Notice, under the provisions of Section XIX. Regulation XII. of 1827, is hereby given, that, in consequence of the prevalence of cholera at Gokak, it is advisable that no 'jatra' should be held there at the present time. If a concourse of people should assemble there at this moment, there would be much probability of the ravages of the epidemic being increased in proportion to the numbers of the assembly, and of the disease being carried to other villages. This Injunction has therefore been issued for the public benefit, and disobedience will be punished according to law.

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BELGAUM.

Notice by a Magistrate.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for submission to the Court of Sudder Foujdaree Adawlut, copy and translation of a Notice issued by me at Gokak in this Zillah, under the provisions of Section XIX. Regulation XII. of 1827.

Precept issued to the Magistrate.—Before recording this Proclamation, the Court request the Magistrate to report whether the jatra alluded to is an annual and established one, or whether it only takes place when cholera is prevalent, and, if the latter, what number of persons are supposed to attend it.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning the within Precept, the Magistrate of Belgaum has the honour to report that the jatra alluded to is not an annual or established one, and that it was only proposed to be held on this occasion because cholera was prevalent in the town, which is the very reason why the Magistrate objects to it. It is impossible to state what number of persons might attend it,—perhaps some thousands, perhaps only a few hundred. In the former case the disease might be carried by the 'jatrakurees' far and wide throughout the country.

Resolution of the Sudder Foujdaree Adawlut.—The Proclamation may be recorded.

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RUTNAGHERRY.

Returning from Expulsion.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case of Sudia bin Ballajee Moongeekur. Tried by the First Assistant Magistrate of Rutnagherry, G. SCOTT, on the 19th September 1856. Reviewed on appeal by the Acting Session Judge of the Konkun, H. P. ST. G. TUCKER, on the 20th October 1856. Proceedings submitted to the Sudder Foujdaree Adawlut for final orders.]

Prisoner.—Sudia bin Ballajee Mongeekur, Bhundaree, aged 50.

Charge.—Returning from expulsion (Regulation XII.

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of 1827, Section XXVIII. Clause 3rd); seeing that he, the said prisoner, did, between 25th July and 5th August 1856, (corresponding with Ashad Wud 9th, and Shrawun Shood 4th, Shuké 1778,) return to the towns of Vingorla, Dhabool, and Arole, &c., Talooka Malwan, Zillah Rutnagherry, from which Zillah he was expelled on the 14th December 1854.

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RUTNAGHERRY.

Returning from Expulsion.

Prisoner pleads guilty.

Finding and Sentence by the Assistant Magistrate.—The prisoner pleads guilty, and, as his confession is fully borne out by the evidence, he is found guilty, and sentenced to six (6) months' imprisonment with hard labour, and likewise to receive thirty (30) stripes, to be inflicted after the first fifteen days of imprisonment have elapsed. (Regulation XII. Section XXVIII. Clause 3rd, of 1827.) At the expiration of the term of imprisonment, it will be necessary again to expel the prisoner from the Zillah, should he not be able to furnish security for good conduct.

G Scott, First Assistant Magistrate.

Review by the Sessions Court.—The prisoner in this case is charged with "returning without leave to the Zillah after expulsion," and has been sentenced to six months' imprisonment, and thirty stripes. It is not entered in the charge, as it should have been, that this was the second return of the prisoner. The award of thirty stripes at one time is not legal (Section VIII. Regulation XIV. of 1827), and I therefore forward the case to the Sudder Foujdaree Adawlut, in order that the flogging may be reduced to twenty-five stripes, the largest number which the Regulations permit to be inflicted on a single occasion, or that the flogging may be divided into two portions, should the superior Court deem this alteration to be necessary.

H. P. St.G. Tucker, Acting Session Judge.

Letter from the Acting Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—For the reasons contained in the annexed extract from my proceedings of this day's date, I have the honour to forward the proceedings held before the Magisterial Authorities of Rutnagherry, in the case of Sudia bin Ballajee Moongekur, which were

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RUTNAGHERRY.

Returning from Expulsion.

called for by me on petition, and request you will be so good as to submit the same for the final orders of the Judges of the Sudder Foujdaree Adawlut.

Resolution of the Sudder Foujdaree Adawlut.—In conformity with the recommendation of the Acting Session Judge, the flogging is reduced to twenty-five stripes.

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DHARWAR.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Petition of Shumsheerdeen wulud Budoo Meeya, a Convict in the Dharwar Jail, to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Dharwar, T. OGILVIE, for Report, on the 9th October 1856.]

Suspicious Character.

Dr. Forbes, Assistant Magistrate.

Prisoner.—Shumsheerdeen wulud Budoo Meeya.

Charge.—Suspicion of being a man of bad conduct.

Sentence by the Assistant Magistrate, confirmed by the Magistrate.—Sentenced to furnish two securities, each of fifty (50) rupees, for not committing robbery, and not keeping stolen property, knowing it to be such, without giving information thereof to the Sirkar, during a period of three years; the securities binding themselves to suffer six (6) months' imprisonment in default of paying the fine. If the prisoner does not furnish the securities, he is to be kept in Jail till necessary.

Petition of Shumsheerdeen wulud Budoo Meeya to the Sudder Foujdaree Adawlut.—[Praying that the sentence passed against him might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to report the grounds of the suspicion against the prisoner, and to state the term of imprisonment to be undergone by him in default of furnishing the security.

Return by the First Assistant Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Precept is duly executed and returned to the Judges of the Sudder Foujdaree Adawlut, with intimation that the grounds of

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suspicion against prisoner were his own confession, corroborated by the statements of his wife and mother, and the discovery of the stolen property, together with the fact of his having been twice before convicted of robbery, and punished with imprisonment for eight and ten months respectively. 1856 November 6. — DHARWAR. — Suspicious Character.

The term of imprisonment was fixed at three years, in default of finding securities.

The petition which accompanied the Precept is returned, as requested.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoner is rejected.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges. 1856 November 12. — BROACH.

[Case No. 7 of the Calendar of the Broach Sessions Court for 1855. Committed by the Magistrate, E. L. JENKINS, on the 31st January 1855. Tried by the Assistant Session Judge, R. F. MACTIER, on the 29th and 30th June; 2nd, 3rd, 5th, 6th, 7th, 9th, 10th, 12th, 13th, 16th, 17th, 18th, 19th, 20th, 21st, 23rd, 27th, and 30th July; 1st, 8th, 9th, 10th, 11th, 13th, 17th, and 18th August; 5th, 11th, 13th, 15th, 18th, 22nd, 25th, 26th, 27th, 29th, 30th, and 31st October; and 1st and 3rd November 1855. Reviewed by the Acting Session Judge, H. HEBBERT, on the 21st December 1855, and 2nd January 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoners Bhaibawa Ameersing, Dwarkadas Anundram, Balmookundas Pranath, Hutoomia Dadamia, and Wudoo Bhugwan.]

Prisoners.—No. 1, Bhaibawa Ameersing, Hindoo, aged 46; and 21 others. Conspiracy.

Charge.—Conspiracy (Regulation XVII. of 1828); in having, between Ashad Shood 13th, Sumvut 1907, (corresponding with the 7th October 1851,) and the present time, at Baroda, Ahmode, and elsewhere (the dates and place cannot be exactly specified), entered into a general combination to set up a boy named Shabhai,

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BROACH.

Conspiracy.

son of Mulikbhai Shaikbhai, Borah, of Baroda, as the rightful owner of the estate of the Thakoor of Ahmode, the said boy being declared by them to be Deepsing Jeetsing, who succeeded to the estate on the 11th December 1849, and who died at the village of Waria, in the Ahmode Talooka, on or about the firstnamed date, viz. Ashad Shood 13th, Sumvut 1907, (corresponding with the 7th October 1851,) thereby defrauding the party who ought to have succeeded to the estate in question, the revenue of which is about Rs. 25,000 per annum, on the death of the aforesaid Deepsing Jeetsing.

R. F. Mactier, Assistant Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners are charged with conspiracy, and plead not guilty.

They are charged with having combined to set up a supposititious heir in the room of Deepsing, the son and heir of the Thakoor of Ahmode, in the Broach Zillah. Deepsing is said to have died, and this to have been concealed by some of his relatives, who had the guardianship of him during his minority, for the purpose of continuing the guardianship in their own hands, and a false child is said to have been substituted for the boy Deepsing, so as to effect that purpose.

The evidence for the prosecution shows the following:—

That Deepsing fell ill, and was taken for change of air to a village called Waria, a short distance from Ahmode. Deepsing died there, and the same evening the prisoner No. 1 (Bhaibawa), his guardian, with an old female relation who goes by the designation of 'mamee' or aunt, the prisoner No. 4 (Hutoomia), and some Arab Sepoys, set out with Deepsing's body in a 'garee,' and took it up as far as the Wusker river, near Baroda; there the body was buried, and Bhaibawa went into Baroda and stated the case to Bulwuntrow Gaekwar, a relation (now dead) of the present Gaekwar of Baroda,

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and by him was promised assistance to get another child to place in the room of the boy Deepsing, and thereby induce the Broach Authorities to believe that the boy Deepsing was not dead; the consequence of this being to continue the guardianship of the minor Thakoor in the hands of Bhaibawa, and keep the 'gadee' of Ahmode from the next heir, who is said to be the grandfather of Futeysing, the present prosecutor. Bulwuntrow promised assistance, and some days were passed in casting about for a child likely to answer the description of Deepsing, and several boys were brought up, but their parents, notwithstanding the inducements held out, would not consent to sell their children. At last, through the instrumentality of one Rahim, a Borah, a boy was found, and the father, Rahim's brother, who seems to be a weak and unprincipled man, agreed to sell his son. The mother of the boy at first refused to consent, and took away the boy from Bulwuntrow's house, where he had been conveyed, and it was only after much persuasion that she was prevailed on at last to part with him. The boy was handed over to Bhaibawa at Bulwuntrow's house, and the father and mother, having been paid a part of the purchase-money, which was Rs. 400, were immediately taken under a guard of Bulwuntrow's people to several villages near Baroda, and kept there by threats and false pretences, till the death of Bulwuntrow, when the search which was made for them at the instance of the prosecutor, who had complained to the Gaekwar's Government, being too closely made, they were taken up to the north of Guzerat and to the borders of Sind, and there were kept for some time. In the mean time the prosecutor had caused inquiry to be made, and this resulted in the sending up of people who brought back the parents of the boy and his young sister. In the mean time, Bhaibawa had taken the new boy to Ahmode, and there gave out that he was Deepsing. He

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was accompanied by Bulwuntrow, who assembled Bhaibawa's adherents and made them swear on 'jowaree' to stick together, and not to betray their companions; and most of the prisoners now at the bar are said to have been of the party who assembled in the 'pursal' of the house of prisoner No. 3 (Nathiba), and swore to keep the story of the false boy secret, and to use their endeavours to pass him off as the true Deepsing. Such is the outline of the case; and to support the prosecution the following would require to be proved:—

1st.—Was there a boy Deepsing, and did he die?

2nd.—Was a false boy set up in his place?

3rd.—Did the prisoners at the bar assist in so setting him up, and, if so, how far in the case of each one?

Now the evidence on each side the prosecution and defence just amounts to this:—

A, the prosecutor, swears so and so is the case; B, the defendants, say it is not. It becomes necessary, therefore, to look closely at the reasons for each statement (Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 32, and 33).

Many old residents of Ahmode, who used to go into the Durbar, say that Deepsing existed, and that he is now dead. They describe his person, and their accounts agree very closely. He is said to have been dark (the Guzerathee is 'samlo'), a thin body, with flat nose, small eyes, and large eyebrows,—altogether an ill-favoured and sickly child; and to have had marks on his body,—one a "crowfoot on his chest, low down, a bar across his shoulders, and a round mark on the back of the neck." These marks were made by firing for disease at different times. All the accounts of these marks agree, and to prevent any inaccuracy of description, each man was made in this Court to draw on a paper the kind of mark he described, and all these agreed. Then Deepsing is said to have died. There are several (witnesses Nos. 13, 15, 17, and 20) who saw him lying, just after he had

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died, in a small swing or cot, such as children are placed in to sleep, and these people all describe his appearance, from which no doubt could remain but that he was dead; and they afterwards saw the body taken out of the house inside the Waria Durbar and laid in a garee, which others (witnesses Nos. 15 and 13) say they saw sent off from Ahmode, it having been sent for in a hurry from Ahmode to Waria. The prisoners No. 1 (Bhaibawa) and No. 4 (Hutoomia), mamee, and some Arabs accompanied it, and they travelled all night till they arrived at the Wusker river the next day. Then one of the Arabs (witness No. 20) who had attended on Deepsing, and who appears to have contracted a great liking for him, was asked by Bhaibawa to throw the body in the river, and so get rid of it. This the Arab refused to do, and he and his fellows washed it, and then buried it in a hole in the bank of the river; one of the number also standing on the top of the bank to give notice of any one's coming. All this evidence is as clear as can be, and that of the Arab in particular seems entitled to full credit; he had nothing to gain by telling a lie about Deepsing's death, and, in fact, he lost by it, as he was turned out of his place, which, if he had kept the secret, he would not have been. He says he could not stand being told to throw away the body of his master, though he was a child, and paid it all the respect he could, and on being afterwards told to dig it up and throw the bones away, he left the service, or was most likely *told* to go.

Now as to the false boy. The *father* and *mother* and sister (witnesses Nos. 21, 22, and 23), besides several near relations of the present boy, all firmly declare he is their relation. None of those could gain by acknowledging a boy to be their relation who was not; certainly not the parents, who would have to take him back, and thereby incur the expense of keeping him. His young sister, a

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girl of twelve or fourteen, speaks most positively as to his being her brother, and her evidence is perhaps more to be depended on than any, and she was not cross-questioned,—a most important point,—as a child of this age could by such means easily be made to get confused and contradict herself; but this was not tried. Then there are the other relations (witnesses Nos. 25, 26, 27, and 28), people of Baroda, even now entirely strangers to both the prosecutor and the parties who were interested in the substitution of this boy for Deepsing, they are respectable tradesmen of Baroda, apparently well off, and having nothing to expect or fear from either side. Why should they come and acknowledge a child as their relation if he were not? There is not the shadow of a reason why they should. Their statements, moreover, show that they were angry on account of the sale of the child from the first, and endeavoured to dissuade the unnatural father from parting with his son as he did. The accounts of the parents show very clearly how the whole matter of the sale was managed, and those of the parents and the girl show, too, how they were taken away and kept away for upwards of a year; the object being evidently to get rid of them in case they should change their minds and want to have the boy back; and possibly in the hope they might die where they were; and, last of all, that the child might forget his old mode of life and his relations altogether. The mother appears now most bitterly to repent ever having been persuaded to act as she did, and her manner in Court in speaking of her child left no doubt as to her being its mother.

Now as to the part the prisoners took in this affair. The evidence adduced to prove the two foregoing points shows who were concerned in the actual substitution of the child; but besides this there is evidence which points out very strongly what the intention was, from the time of the death of Deepsing and the departure of Bhaibawa

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to Baroda in search of another. This evidence are the papers A I. to L II. (No. XLIV. A B C), which show that arrangements had been in progress in consequence of the death of Deepsing as to the succession to the gadee, and this before the fact of the supposititious boy became generally known,—that is, while Bhaibawa was in Baroda, and before he produced the boy in Ahmode; and that afterwards (No. XLIV. E H) means were being taken to prevent the parents of the false boy from coming to Ahmode, where they would, by talking, spoil the whole plot. There is shown in them the arrangement made to get up a defence by calling two or three hundred witnesses (No. XLIV. J), and which has been done exactly in the manner laid down in the paper No. 9 J, showing this plan to have been previously arranged.

The evidence for the prosecution also shows that some little time after the death of Deepsing, certain of the prisoners were heard to swear to keep together to assist the false boy to be kept on the gadee, and this swearing did not take place *once* but *twice;* the first time in a garden belonging to the Ahmode Durbar, where the prisoners Nos. 9 and 10 are mentioned, by all the three witnesses (Nos. 36, 38, and 39) who depose to this fact, to have sworn not to divulge, to plot, and to stick to one another. The prisoners Nos. 9 and 18 are also mentioned by one witness (No. 36), and the prisoner No. 11 by another (No. 38), as having been in the plot.

The next time of swearing together was in the pursal or close verandah of the house of prisoner No. 3 (Nathiba), inside the Ahmode Durbar, where Bulwuntrow and all the prisoners down to No. 18 are said (witnesses Nos. 35, 36, 37, and 38) to have been present: the prisoners Nos. 20, 21, and 22 are mentioned, but not by all the witnesses. These persons are said to have sworn on jowaree to put the false boy on the gadee of Ahmode, and support him and each other by every means in their

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power. Now, regarding these times of swearing, it might be said that no people would plot together thus openly, and give others an opportunity of hearing what they said: but it must be remembered, that those who heard this were not strangers; they were allowed to come and go into the Durbar; and they say they were invited to join in the plot, but refused. So, after all, there is nothing very unlikely in this. The swearing together would not, in the Court's opinion, suffice, without evidence of something else, to show that the prisoners took part in this conspiracy; but in the case of many of the prisoners there is additional proof. And now to show what tells against each.

As to prisoner No. 1 (Bhaibawa).—He is shown to have taken the body of Deepsing away by night, and to have got it buried on the way to Baroda, and then to have brought the false boy with the help of Bulwuntrow Gaekwar. He is shown to have been one of the party who swore together in Nathiba's pursal, and his name occurs in the papers which were produced by the prosecutor, and from them, if proved, which will be spoken of hereafter, it must be clearly seen that he was the principal in the whole affair from the beginning. His position, too, as the guardian of Deepsing, affords strong presumptive evidence as to the motive for all that was done, as, at the death of Deepsing, the gadee of Ahmode would go to another branch of the family, and he would sink down into a mere dependent, instead of, as before, being chief manager: no wonder, then, is it, if he tried hard to conceal Deepsing's death and set up another child, as his so doing would be the only means of enabling him to keep up his position.

As to prisoner No. 2 (Sirdarba).—She is said to have been one of the party who swore to uphold the false Deepsing, but that is all that is clear against her, except her having an interview with the mother (witness No. 22)

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of the present boy, and endeavouring to get her to unsay what she had said before.

As to prisoner No. 3 (Nathiba).—The proof against her is as above, except that she is not mentioned as having tried to persuade Chandboo, the boy's mother, to give certain evidence.

As to prisoner No. 4 (Hutoomia).—He appears to have been Bhaibawa's (No. 13) right hand man in the whole affair, and to have assisted in concealing the death of Deepsing, and in the purchase of the new boy. He is said to have been one of those who met and swore in the pursal of Nathiba's house.

As to prisoner No. 5 (Dwarkadas).—This man appears to come next to prisoner No. 1 (Bhaibawa), and even to have managed matters which Bhaibawa was not capable of doing. His name does not come forward till the time of the false boy being purchased, and then he seems to have taken up the matter with all his heart. This will be seen from the papers Nos. 1, 2, 3, 4, 6, 7, 9, 10, and 11, which are shown by several witnesses (Nos. 40, [42 ?] 41, and 43) to be in his handwriting, and their contents show sufficiently well that he had a very principal part in the conspiracy. He has been shown to have been one of the party who swore in Nathiba's pursal, and it may not be out of place to add here that during this trial many of the questions put on the part of the prisoners were, at his suggestion, quite independent of what he himself had to do with the subject of the deposition. This looks as if he had taken on himself the office of defender for all the prisoners, in case of detection of the plot.

Prisoner No. 5 is shown to have been the manager of the estate of the Ahmode gadee while under attachment, and it was very natural for him to wish the present state of things to continue, he having the chance of being curator until the majority of the boy Deepsing, and of course at liberty, with the concurrence of Bhaibawa, to make the

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best he could out of those who had to pay rent to the estate; and, therefore, it cannot be doubted that he liked his position as curator too well to care about being disturbed in it. If the successor to the estate at the death of the heir was fixed, he would have to vacate his position on the attachment being raised, and possibly have to render up accounts of his charge, which, for many reasons, might not suit his purpose.

As to prisoner No. 6 (Balmookun).—He too, like the above (No. 5), seems to have had a principal part in the affair, and to have had, as will be seen by the papers Nos. 5 E and 8 H in his handwriting (vide Nos. 40, 41, [42?] and 43), a principal part in the management of the whole conspiracy. He figures as one of the party in the pursal, and appears also, with prisoner No. 5, to have taken an active part in trying to persuade the witnesses for the prosecution not to give evidence that would do harm.

He appears to have had some influence at Ahmode, and to be a great friend of Bhaibawa's, and, therefore, to have done his best to save him.

As to prisoner No. 7 (Wudoo).—He also seems to have been a principal agent with the two preceding. He is spoken of (witnesses Nos. 15, 24, and 32) as being in Baroda doing what he could to further the ends of the conspirators, and also to have been one of the two or three who swore in the garden of the Ahmode Durbar to further this undertaking. He seems to have taken a principal part also on the other occasion of swearing, as all the witnesses to this affair say he was the person who got jowaree to swear on.

As to prisoner No. 8 (Lukmiram).—He appears in the swearing scene in Nathiba's pursal, and is mentioned in several of the papers produced by the prosecutor, and shown to be in the hands of prisoners No. 5 (Dwarka) and No. 6 (Balmookun), by the name of Bapoobhai. These are C 3, D 4, F 6, K 10, L 11; and

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he sometimes writes and sometimes is written to, but the whole subject is this conspiracy.

As to prisoner No. 9 (Mulookchund).—He does not seem to have a very prominent part in the conspiracy: he is mentioned as one of those who swore in Nathiba's pursal, and one witness (No. 36) says he was one of the party who swore in the garden also.

As to prisoner No. 10 (Kupoorchund).—He does not seem either to have taken a very active part: he is, however, named by all the witnesses to the swearing in the garden, and also by those who speak of the oath in Nathiba's pursal.

As to prisoner No. 11 (Dulputram).—He is mentioned (witnesses Nos. 24 and 21) as having been in Baroda, and being one of Bhaibawa's party there, and his name is besides in letter No. 10 K as having been in Baroda. He is named as one of the party in Nathiba's pursal, and one witness (No. 38) names him as having been in the garden when an oath was taken there.

As to prisoners Nos. 12 and 13 (Deerujram and Amooleekrai).—Neither of these two appears to have been concerned in any great degree in the plot: they are mentioned as having sworn in Nathiba's pursal.

As to prisoner No. 14 (Rysung).—He is mentioned in the course of the trial several times; but he seems to have taken no very prominent part in the conspiracy.

As to prisoners Nos. 15 and 16 (Dyashunker and Bhugwandas).—These do not appear to have taken a very prominent part in the conspiracy, though they are said to have sworn in Nathiba's pursal.

As to prisoner No. 17 (Muna Dyal).—This man is mentioned (witness No. 14) as having made inquiries about procuring a child in the neighbourhood of Ahmode to set up as Deepsing, and he is named as one of those who swore in Nathiba's pursal.

As to prisoner No. 18 (Walimea).—Nothing particular

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is said of this man. He is mentioned in the course of the trial, but not as having done anything particular, which would point him out as having taken a chief part: he is named as one of those who swore in Nathiba's pursal.

As to prisoner No. 19 (Bhugwandas).—He is hardly spoken of at all, and all he seems to have done is to have concealed the manner in which the deceased Deepsing was said to be marked.

As to prisoner No. 20 (Sudasewlal).—He is mentioned in the letters, but nothing very strong is proved against him: he is not named directly by all those who speak of the swearing in Nathiba's pursal.

As to prisoner No. 21 (Nundlal).—He appears to have taken a somewhat more prominent part than some of the foregoing: *he appears to have been up in Baroda*, is mentioned in the letters (Nos. 24 and 35 E H K), and is said to have been among those who swore in Nathiba's pursal.

As to prisoner No. 22 (Nathoobawa).—He is like the above. There is nothing to show he was intimately connected with the conspiracy, though there is little doubt he was well aware of what was going on.

This, however, might be said of many more who are not here at all, as there cannot be a doubt but that hundreds of people were well aware of what was going on; and it could have been only the fear of the vengeance of those then in power that hindered them from speaking out. This is the common feeling in this country, and being so, persons could hardly be considered as guilty because they merely held their tongues, and did not mention what they knew to the Authorities.

Now as to the defence which the prisoners have set up.

In the first place, it will be necessary to look at letter No. 9 J, which shows what immediate resolution was come to on finding the conspiracy had been brought to

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light. The fruit of this is seen. Prisoner No. 1 (Bhaibawa) brought forward a list of no less than 581 witnesses on his own part to show what will be mentioned hereafter; but, first, the object of bringing forward so many people should be looked at. Any one must know that if a fact be capable of proof at all, it can be proved by a much less number than 581 witnesses, and it seems that the naming so many is of a piece with the arranged plan. Now to examine what these witnesses have to depose to.

They tried to show that the story of the death of Deepsing was all false, and declared that the boy shown them was Deepsing and no other; but with a few exceptions they were not such people as would be likely to know, being several of them residents of other villages. They then stated (witnesses Nos. 69, 70, 73, and 74) that Bhaibawa started from Waria on a jatra, and people (witnesses Nos. 80 and 81) are produced who mention having met him on the road; another (witness No. 82), belonging to Baroda, says he arrived there, and after staying a certain time left for the jatra, and was recalled by a sowar of Bulwuntrow's, and that after his return he stayed four months in Baroda, and thence returned, in company with Bulwuntrow, to Ahmode. There are many things quite unexplained in this defence. First, why the jatra was made. Some say that Deepsing was ill, and that it was made on that account; others, that he was not. Supposing it to have been made, there is nothing clear as to why Bhaibawa returned when he got on the way. It is said that a report of the death of Deepsing was the cause; but there is no connection shown between this and the return from the proposed jatra. Then the accounts of the different persons as to Deepsing vary in the most extraordinary way. Some say he was not ill at all; others, that he was: some say they never heard a report of his death; others, that

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they did. Some of these witnesses have committed a very common mistake, they have overdone what they were intended to prove: for instance, some say Deepsing was not ill; his guardian, under whose eyes he was kept, and who might be supposed to know, says he *was* ill, but not very much so: so that the effect of these contradictions is to render the whole of the evidence useless. Another instance, which is a most palpable case, is in the deposition of witness No. 73 (Rugonath Narotum): he says,—"Deepsing's father Jeetsing died seven years ago"; then he says Deepsing was eight *years* old when his father died. The true answer would be eight *months*, but this witness, having evidently learned his part, and that imperfectly, said *years* for months, making his statement nonsense. These witnesses' statements are full of assertions which cannot be accounted for, and which contradict one another. The next thing that is to be remarked is the evidence (witnesses Nos. 88 and 89) called to show there was no meeting in Nathiba's pursal: those called to show this say they did not see those come who are said to have come there, but yet that is no reason why the meeting did not take place; it turns out that the place of meeting was some distance off, and that this might have taken place without these people seeing it. Such is the general nature of the defence set up by prisoner No. 1 on behalf of himself and prisoners Nos. 4, 2, and 3, and those immediately concerned in concealing the death of Deepsing and the substitution of the false boy. It seems unnecessary to particularise the evidence, because the greater part of it, where contradictions arise, has been recorded in the form of questions and answers, which make it easier to be seen through. The other prisoners set up an *alibi* as their defence, and each produces a goodly number of witnesses to show he was somewhere else when the swearing in the pursal was going on. The

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same that was said above may be remarked of these witnesses: they express themselves as having a full recollection of the fact of these particular persons' presence in their village or elsewhere, whose *alibi* they are called to prove, but there they stop; and when questioned as to their recollection of other facts occurring at the same time, or later, they profess to have forgotten: they give, as the particular reason for remembering, the existence of the Hindoo feast of the 'Busunt-punchi,' but do not say why they remember that particular feast more than any other which occurred in a succeeding year.

Putting, however, the question of the swearing in the pursal aside altogether, there are other facts appearing against some of the prisoners which cannot be got rid of. First, the presence of the false boy. They say, and their witnesses affirm, that he is Deepsing. Now who is most worthy of belief,—these witnesses, who for the most part have only seen Deepsing several times, or the relations of the boy, who say he is their relation, and that they have known him from his cradle? Supposing the mother to be blind, and that she could not know her son, there are his father, sister, and others, all saying who he is, and, moreover, saying how he came into the position he now holds. All this clearly depends on the credibility of the evidence, and this Court will place more confidence, unless shown to the contrary, on the story of a *relation* called to prove identity, than on that of any other person. There are many discrepancies in the account of the boy Deepsing given by the witnesses for the defence: some say they don't know of any marks; others say they do, and point out such on the body of the boy now produced: but no such discrepancies exist in the stories of those who speak of the deceased boy Deepsing; they all mention two marks, and his personal appearance, colour, and so on. Again, as to the way in

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which the journey to Baroda is accounted for, the story of prosecutor is that all this was done secretly; the other story told is that Bhaibawa went quite openly away on a jatra from Waria; but here are several little things unaccounted for;—the *reason* of going is not by any means clearly laid down, and, if a jatra were the object of going, why was it not carried out? There is not a word said of the reason why four months were passed in Baroda, and why the primary object of going there—the proposed jatra—was not carried into effect. Had any fears been entertained of the safety of Deepsing, supposing him to be alive, why not seek the protection of the Broach Authorities, instead of going and staying in Baroda, where enemies could have a much better chance of carrying out any evil purpose than in Ahmode? All this wants clearing up, and, in default of this, the whole must be set down as a fabrication; and now, therefore, the only conclusion that this Court can come to is, 1*st*, that Deepsing did die; and 2*nd*, that a false boy was set up in his place.

Now, to see, who among the prisoners did this. The letters produced by the prosecutor throw a good deal of light on this: these were handed over to him by Sewrai Juverlal (witness No. 43), who appears himself to have had something to do with the plot at first, but to have withdrawn when he found matters growing serious. All the papers, but the three first, were in his hands, and he handed them over to Futeysing the prosecutor; and Sewrai (witness No. 43) himself not only deposes to the writers of them, but *others* (witnesses Nos. 40, 41, and 42) do so also; and witnesses Nos. 5 and 6 are shown to have been those writers, and by them the existence of the conspiracy is very clearly shown.

The prisoners named an immense number of witnesses to call in their defence, but all or most of these only

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had to depose to one or two facts; those whose depositions have been recorded were deemed sufficient. The object of the calling so many is very clear—to make the proceedings longer than even they are now, and to create doubts, by the existence of which benefit might be gained. Evidence was also named to show enmity between the prisoners and prosecutor. This does not require proof: it is not very likely, if a man saw himself kept out of his inheritance by a deep-laid plot, that he would entertain any other feeling towards the authors of that plot but that of enmity; and evidence to show this would be needless. Several persons, Government servants, are also accused of falsely charging the prisoners; these are Ladkoba (witness No. 34), the Head Clerk of this Adawlut, and Choonilal, the Magistrate's Sheristedar. The first of these would, from his former position as curator of the attached gadee, be an object of dislike to those who were trying to get it into their hands; and the next, having been sent to make some inquiries regarding this conspiracy, would of course be an object of hatred. Evidence to show the 'dosti' or friendship of those two was offered, but was not considered necessary to be taken; such a proceeding would be as sensible as to show the existence of friendship between the Magistrate who committed a case and the Judge who tried it. The prisoners also adverted to alleged discrepancies between the evidence of witnesses as given before the Magistrate and in this Court, quite forgetting that all this Court could go upon was the evidence given in it, and also that, if they were aware of marked discrepancies, they could cross-examine the witnesses upon them here; and this was done in several cases. As much evidence as could possibly be of use, by their own showing, was allowed, and what it has turned out has been pointed out in the foregoing remarks. On a full consideration of the evidence in the case, the Court does not think that it is sufficient proof of a pri-

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soner's guilt in this case to have sworn to put the false Deepsing on the gadee, but that something must be proved besides the actual oath to do so, and this is only the case with regard to the following:—

Prisoner No. 1 (Bhaibawa), who has been shown to be in the whole plot from the first.

Prisoner No. 4 (Hutoomia), who seems to have acted as a right-hand man to prisoner No. 1 (Bhaibawa).

Prisoners No. 5 (Dwarkadas) and No. 6 (Balmookun), who have evidently been at the bottom of the whole matter.

Prisoners No. 7 (Wudoo) and No. 8 (Lukmiram), appear to have been agents in a less degree in carrying out the object of this conspiracy; and prisoners No. 11 (Dulputram) and No. 21 (Nundlal), in a still less degree, but yet they *are* shown to have been engaged in the plot.

Putting aside the fact, therefore, of the above prisoners having met and sworn to substitute a false boy for Deepsing, there is still, in the Court's opinion, sufficient to prove that the above persons were engaged in this conspiracy, and in the following degrees:—

1st.—Prisoner No. 1 (Bhaibawa).

2nd.—Prisoners Nos. 5 and 6 (Dwarkadas and Balmookun).

3rd.—Prisoners Nos. 4, 7, and 8 (Hutoomia, Wudoo, and Lukmiram).

4th.—Prisoners Nos. 11 and 21 (Dulputram and Nundlal).

The Court, therefore, finds the prisoners Nos. 1, 4, 5, 6, 7, 8, 11, and 21 (Bhaibawa, Hutoomia, Dwarkadas, Balmookun, Wudoo, Lukmiram, Dulputram, and Nundlal) guilty of conspiracy; in having combined to set up a false boy in the room of Deepsing Jeetsing, deceased, Thakoor of Ahmode, in the manner set forth in the charge.

The prisoners Nos. 2, 3, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 22 are acquitted and discharged.

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Having found the above prisoners guilty as above, the Court passes the following sentence, considering the relative stations of the prisoners:—

That you, Bhaibawa Ameersing, be imprisoned, and kept to hard labour, for the space of three (3) years, and further, that you pay to Government a fine of five thousand (5,000) rupees, or, in default, that you suffer imprisonment, with hard labour, for a further period of one (1) year.

That you, prisoners Nos. 5 and 6 (Dwarkadas and Balmookun), each be imprisoned, and kept to hard labour, for the space of two (2) years, and further, that each of you pay to Government a fine of five hundred (500) rupees, or, in default, be imprisoned for a further period of one (1) year.

That you, prisoners Nos. 4, 7, and 8 (Hutoomia, Wudoo, and Lukmiram), each be imprisoned, and kept to hard labour, for the space of eighteen (18) months, and further, that each of you pay a fine to Government of two hundred (200) rupees, or be further imprisoned for six (6) months.

That you, prisoners Nos. 11 and 21 (Dulputram and Nundlal), each be imprisoned, and kept to hard labour, for the space of one (1) year, and that, further, you each pay to Government a fine of one hundred (100) rupees, or be further imprisoned for six (6) months. (Regulation XVII. of 1828.)

Subject to the confirmation of the Session Judge of Surat, with regard to prisoners Nos. 1, 5, and 6. (Act No. XIX. of 1839.)

* * * * * * * *

This case, the Court regrets, has taken a long time to get through, but it could not well be otherwise; the quantity of evidence offered for the prosecution was immense, and a great deal of what seemed irrelevant was rejected after the case was committed; but even in the

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present state of the case it took long to get through, what with cross-questioning and questions misunderstood. In the defence very little was required to be shown in the examination in chief, and that part was got through quick enough, but the cross-examination of such witnesses as were produced, whose evidence has been commented on above, must necessarily take long, and could not be avoided, it being the Court's business to see whether such evidence was worth anything at all, and nothing could show this but cross-examination. The result of this has been seen in the depositions themselves, but it has been thought necessary to allude to it, to explain why such a time was taken up in the trial.

The case was sent to the Sessions in May last, and was not tried then, but handed over to the Assistant Session Judge, who just at this time became ill and unable to attend the Court at all. Thinking, therefore, after some time, that he would be inflicting hardship on the witnesses, and causing extra expense to Government, to keep them till he recovered, the Assistant Session Judge let them go, and they were afterwards sent for, when the case was begun, a certain number at a time, as they were likely to be called, but as this could not be determined on with certainty, some of them were long in coming, which caused occasional delay; besides this there were other cases coming in, in which the prisoners were not on bail as was the case in this instance, and, not wishing to keep them waiting, the Assistant Session Judge entered on their cases in the intervals, when this case was laid over, and, though aware of the rule that a case should be gone through at once without intervals, the Assistant Session Judge thought it better to dispose of those lighter cases in which the accused parties were in confinement, than to wait till this was finished in which all the prisoners were on bail. Besides the above, the prisoners petitioned the Session Judge of Surat, re-

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flecting on the conduct of the Assistant Session Judge in this trial. This was referred for report, and pending a reply to this, the case was laid over, it being openly stated by the petitioners that they did not trust in the honesty and justice of the Assistant Session Judge, and they begged the case might be handed over to another. Not knowing what answer would be given to this, and, moreover, feeling justly indignant at such gross misstatements, the Assistant Session Judge did not think himself authorised to go on with the case until he had received instructions regarding it. It is the custom to allow accused parties a good deal of excuse, but making such statements as exist in that petition was going far beyond the limit, and the Assistant Session Judge cannot imagine any one, who was similarly charged, having any other feeling than he had on the subject, and therefore, also pending an answer to this reference, the witnesses, mostly at their own request, were allowed to depart. The Assistant Session Judge may have erred in doing as above, but, as in his short experience he never had seen a similar case, he was in doubt, and acted as he thought would be best under the circumstances.

With regard to the way in which the case was got up and sent to the Sessions, the Assistant Session Judge has some diffidence in saying all he could on this point, not wishing to make comments on an Officer so much senior to himself; but he thinks it cannot fail to be perceived how much shorter and better proceedings might have been made. About sixty-six witnesses were sent up, when twenty at most would have done, and instead of taking the trouble of hearing the whole or part of the defence, this was not recorded at all, and the Sessions Court left in entire ignorance of the line likely to be taken therein; if this had been known, other and more useful evidence might have been recorded for the prosecution, as there was plenty to pick and choose from.

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Being in the dark, therefore, as to what sort of defence would be made, the Assistant Session Judge thought it his duty, as public prosecutor, to record all or nearly all the evidence of a certain sort which was sent up, and, after all, has had the mortification to see that much of it was useless. All this might have been saved by little more attention to the getting up of the case at first.

There was apparently no use to take all the witnesses the prosecutor offered; this seems to have been done, however, and the papers produced were not noticed at all; more complete proof could easily have been got regarding them.

Had investigation been made when the story of the deceased Deepsing first was brought to notice, all this conspiracy might have been crushed at the very outset, as search made for the body of Deepsing would have set at rest any doubt as to his being dead, and this could easily have been done at the time; but after the lapse of three or four years in such a climate as this, the search would be useless.

There have been allusions made to the Vakeel for the prisoner, Jeewunram Sahebram. The Court perceived, very soon after the beginning of the trial, that this Vakeel was much more concerned in the matter than being merely a Vakeel employed to defend the prisoners, and soon after, the evidence of three or four witnesses, and what is shown by the letters produced in evidence, confirmed this impression; had these letters been examined in the preliminary inquiry, the Vakeel might have been implicated in the conspiracy, in which there is no doubt he was a principal performer. The Assistant Session Judge reported regarding his conduct in this case and his previous character, and though no charge of subornation of perjury would hold against him, still, under all the circumstances, and on the evidence against him, the Assistant Session Judge consi-

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dered it necessary to hold proceedings, and this being done, he has been recommended to have his Sunud cancelled, a punishment much too light, considering, as this Court does, that if he did not actually get up the whole conspiracy, he at least did all in his power to carry out its object; he is a sharp man, and without the the assistance of such this affair could never have been brought to the degree of completeness it has.

H. Hebbert, Acting Session Judge.

Reviewed by the Acting Session Judge.—In these they all repudiate the charge, and criticise the evidence as inconsistent with itself and with the evidence given by the same parties on former occasions, especially that affecting the prisoners binding themselves together by an oath on some jowaree.

Having heard the parties' Vakeels, viz. Pestonjee Ruttonjee on behalf of the complainant, and Dayabhaee Suwaichund on behalf of the prisoners, the Court, before coming to any decision on this case, determines to write to the Magistrate at Broach to forward, with as little delay as possible, the original depositions taken by Choonilal Venilal, his Sheristedar, on the occasion of his being deputed to Ahmode to inquire into the business in question; also the original deposition of Kursun Doola, given before the Assistant Magistrate, Mr. Ashburner, on the 3rd April 1852, and the original personal description, recorded in the Kucheree at Ahmode, of Deepsingjee Jetsingjee, the Thakoor; or, in default of that, a carefully compared authenticated copy thereof.

* * * * * * * *

Read and recorded a letter from the First Assistant Magistrate in charge, No. 924, of the 27th ultimo, forwarding the papers and proceedings called for in the Court's letter of the 21st idem.

Read the papers and proceedings above alluded to.

In the descriptive roll of the Ahmode Kucheree, Deepsingjee Jetsingjee is entered as the colour of wheat, round

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face, and thin, with a black spot on his left leg; also as aged, on the 7th September 1850, one year, eleven months, and nine days.

It appears the late Thakoor of Ahmode, Jetsingjee Abbasingjee, died in April 1849, leaving three widows, one Sirdarba, the daughter of Gamulsing (witness No. 4); another, Tukutba, the daughter of Bhaibawa (prisoner No. 1); and the third, Soonjanba, the daughter of Bhurutsing, Thakoor of Kherwara (witness No. 9). Of these, Sirdarba and Soojanba were childless, but by Tukutba the Thakoor left one son, Deepsingjee, an infant of about seven or eight months old.

At the time of Jetsingjee's death the witness Gamulsing was his Karbharee, or head manager; but after that event the prisoner No. 1 (Bhaibawa) claimed the office as grandfather of the infant Thakoor on the mother's side. This led to antagonistic proceedings in the Civil Courts between these two, during which the whole property pertaining to the gadee was attached, and a curator, the witness No. 34 (Ladkoba), appointed; but eventually a certificate as guardian of the child was granted to Bhaibawa, under date the 21st July 1852.

It is now asserted that, prior to this period, that is on or about the 7th October 1851, Deepsingjee, the infant above alluded to, died; and the prisoners are charged with conspiracy, in having purchased another child in Baroda, and combined together to pass him off as the one deceased, to the prejudice of the late Thakoor's next of kin, at that time Chutersingjee (since dead), the grandfather of Futesing (witness No. 3), the complainant in this case.

Although, as above mentioned, the witness No. 4 (Gamulsing) managed the property, the infant Deepsingjee was under the care of his grandfather, the prisoner No. 1 (Bhaibawa), and resided with him for the most part at Waria, a village belonging to the gadee, distant some four miles from Ahmode.

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It seems admitted on all sides that Deepsingjee was removed from Waria after dusk on the evening of the 7th October 1851. The question is, was he taken thence dead, or alive? The evidence on this point is most contradictory. The powerful feelings that influence them may be judged of by the outline above given of their relative position to each other, and each party (the complainant and the chief prisoners) has brought forward a number of dependents and others, who would probably depose to anything they were desired. But the Court concurs in the opinion of the Assistant Session Judge that the child was at that time dead. The Court considers the evidence of the witnesses Lukho Bhooder and Sayed bin Ahmud (Nos. 15 and 20) corroborated by the testimony of Ladkoba (witness No. 34), and the letters produced satisfactorily establish this. And with reference to the first witness just mentioned, the Court would observe, that he is one of the very few whose evidence has been consistent throughout this investigation. His deposition taken in February 1852 corresponds with that now given by him, whilst, further, it is especially deserving of notice, that although the prisoners have produced another as the man who drove the garee from Waria on the night in question, viz. the witness No. 73 (Rugnath Nurotum), yet, in his deposition given before the Joint Police Amuldar in February 1852, the Arab (Chaoos, as he is called) who went to fetch it, and of whose leaning towards the prisoners there can be no doubt, himself admits Lukho drove it.

Of course, the Court having recorded its conviction that Deepsingjee is dead, it necessarily follows that in its judgment the present child is supposititious. But, further, the Court is of opinion, on the evidence of the relatives and friends of that child, that it is established he was transferred to the now deceased Bulwuntrow Gaekwar, and the prisoner No. 1 (Bhaibawa), in

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Baroda, shortly after Deepsingjee's death. Even the prisoners do not attempt to deny or controvert the fact that Mulikbhaee Shaikbhaee, his wife, and daughter, (witnesses Nos. 21, 22, and 23), being the father, mother, and sister of the child, were absent from Baroda and sent wandering, so to speak, all over the country, even to the confines of Sind; and why was this? The thing seems inexplicable, except that it was, as deposed to by them, to get them out of the way, and prevent the discovery of the plot now under investigation.

The next question for consideration is this,—against which of the prisoners is the charge proved? The Court coincides in the judgment of the Assistant Session Judge that it is so against Bhaibawa, Hutoomia, Dwarkadas, Balmookundas, and Wudoo (prisoners Nos. 1, 4, 5, 6, and 7); but it is not satisfied of the guilt of the other prisoners convicted by the Assistant Session Judge, viz. Lukmiram, Dulputram, and Nundlal (Nos. 8, 11, and 21). There is no evidence to any previous combination to effect the object in view, even among the first abovenamed prisoners; the circumstances of the case hardly admitted of this. But the Court is of opinion there is quite enough to show the tendency of the after-conduct of one and all of them to maintain the present so-called Deepsingjee in the false and fraudulent position he now fills. As against the last abovenamed prisoners, the Assistant Session Judge has relied very much on the evidence to their binding themselves with others by an oath, and on their being mentioned in the letters produced; but the Court entirely disbelieves the story of the swearing in the 'waree' and in the pursal of the house of the prisoner No. 3 (Nathiba). It is not mentioned in any of the depositions of February 1852, and yet, as it would appear, these were taken only a few days after it occurred, for, according to Tulsee Desaee (witness No. 36), this was on the 7th or 8th Magh Shood, Sumvut 1908,

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(28th and 29th January 1852), it is incredible it would not have been then mentioned, if true. In the same way the Court considers the letters produced, having been written by two of the prisoners, should not be allowed weight against those merely mentioned therein. It is true one of them is addressed to the prisoner No. 21 (Nundlal), jointly with the witness No. 43 (Sewrai Juwerlal), but the latter expressly states Nundlal was not with him when he received it, and, therefore, it is quite possible he may know nothing about it.

The Court does not consider the sentence passed on any of the prisoners a bit more severe than they deserved.

Under this view, the conviction and sentence of the prisoners Bhaibawa, Dwarkadas, and Balmookundas, (Nos. 1, 5, and 6) are confirmed. In the conviction and sentence of the prisoners Hutoomia and Wudoo (Nos. 4 and 7), the Court sees no ground for interference. The prisoners Lukmiram, Dulputram, and Nundlal (Nos. 8, 11, and 21) are acquitted, and are to be discharged.

* * * * * * * *

With reference to the Assistant Session Judge's remarks on the misconduct of the prisoners' Vakeel, Jeevunram Sahebram, before him, the Court has already pointed out to the Assistant Session Judge that it was competent to him to have fined the Vakeel for the same, under the provisions of Regulation XIII. of 1827, Section XI., and this would seem to have been the proper course to have pursued. The Assistant Session Judge, however, has further recorded his opinion this Vakeel had a guilty knowledge of the conspiracy, but the Court does not think this necessarily results from the mention made of him in the letters produced; much of that is reconcilable with his having been the Vakeel of prisoner Bhaibawa, in the matter of his application for a certificate, and the rest with his having been consulted by some of the prisoners

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who were in the conspiracy, but who may or may not have disclosed the same to him. Suspicion certainly to some extent rests on him, but anything like proof, warranting an application for the cancelment of his Sunud, the Court regards as wanting.

The Court observes this case was committed by the Magistrate on the 31st January, yet was only received by the Assistant Session Judge on the 20th April 1855. The Assistant Session Judge will be requested to be good enough to call for and furnish an explanation of this.

The Court further observes the Assistant Session Judge adjourned this case from the 18th August to the 5th October, pending an answer to his report on the prisoner's petitions of the 15th and 20th August last, but as that answer was despatched from Surat on the 11th September, the reason assigned seems insufficient to cover the whole interval. The Court considers that no adjournment at all was then necessary, and that the Assistant Session Judge erred in the view he took of the matter alluded to.

In conclusion, the Court has much pleasure in recording its opinion, that great credit is due to the Assistant Session Judge for the pains and trouble he has obviously taken to sift this long and tedious case thoroughly.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case the appellants have been convicted of conspiracy; in having set up a spurious child in place of the young Thakoor of Ahmode, alleged to have died on the 7th October 1851.

The prisoners and the prosecutors are the relatives, or dependents of the family of the Thakoor, representing different branches, who have for years been at enmity, disputing as to the paramount claim to the estate; having once, it appears, carried a Civil Suit on the subject as far as the Privy Council in appeal, and also set up accusations of fraud, such as is charged in the present

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case, to pervert right and justice in the matter of succession to the possessions of the Thakoor.

As was only to be expected under such circumstances, we find this trial presenting a conspiracy on one side or the other, supported by masses of testimony loaded with perjury or gross exaggeration. Although obscured, however, by the voluminous conflicting testimony recorded, the questions on which the appeal rests are, when extracted, simple; and we have to see whether the conclusions of the lower Courts are shown to be erroneous, and whether omissions and errors have occurred, such as ought to invalidate the judgment.

The case has been ably argued for the appellants, and it has been maintained that the rejection of important witnesses is fatal to the decision;

That no body of the youth Deepsing, alleged to be dead, was produced, as it might have been;

That the descriptive record produced before the Session Judge is in favour of the prisoners, as to the personal appearance of Deepsing; and

That the witnesses for the prosecution generally, and especially those to the death and burial of Deepsing, and to the substitution of the counterfeit boy, are not to be believed.

It is undoubtedly improper that the other witness or witnesses, if any were available, alleged to have been at the secret burial of Deepsing, were not examined; and I think, further, that the Session Judge was not justified in calling for a deposition of the Arab Chaoos, which was not proved before him, but only stated to have been given before the Magistrate's Karkoon, and using a part of that statement against the prisoners.

Neither was the descriptive roll proved, as it ought to have been, to make it of any use as evidence.

If, however, the story of the burial, as described by witnesses Nos. 15 and 21, be rejected, there remains the

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giving up of the child by his parents, and his identification by them, both confirmed by so many witnesses, while the wanderings of the parents themselves to a distance for so many months, not as free agents, but in charge of persons sent with them, are not denied, and are in no way accounted for otherwise than as set forth for the prosecution, viz. that they were to be kept out of the way. If, then, this part of the case is believed, and I see no reason for questioning the opinion formed by the lower Courts on the evidence in support of it, what becomes of the allegation that Deepsing is alive? His death and burial may have been untruly described, but his representative being shown to be false, where is he, the original Thakoor?

There is further the documentary evidence, which cannot be explained away.

After a careful consideration of all the questions raised, I come to the conclusion that the appellants have failed to make out a case for the Court's interference in favour of any of them, for the omission of not taking all the evidence offered as to the death and burial would not avail to set aside the sentence, seeing that there are facts and circumstances that would still remain unexplained, and which are, in my opinion, inconsistent with a reasonable belief that they are innocent, and that the case for the prosecution is a conspiracy against their liberties, which is the alternative presented.

So important a case as this should have been tried by the Session Judge himself, and not left to the Assistant Judge, who was in temporary charge of the Adawlut at Broach.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—In this case the prisoners, twenty-two in number, were charged with conspiracy, in having set up on the gadee of Ahmode a spurious child named Shabhaee, said to be the son of a Borah, named Mulik Sheikbhaee, in the place of Deepsingjee

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Jeetsingjee, the real Thakoor of Ahmode, who is alleged to have died at Waria on 7th October 1851.

To establish this charge it seems necessary that the following points should be proved :—

1*st*.—That Deepsing died at Waria.

2*nd*.—That the child Shabhaee, at present on the gadee, is not Deepsing.

3*rd*.—The part that each of the prisoners took in this conspiracy.

The evidence that has been chiefly relied on to prove the death of Deepsing is the evidence of witnesses Nos. 13, 15, 17, and 20, together with the correspondence which has been recorded in the case.

The first of these, Bapoolal Vishnoo, was in the service of the Durbar as a money-lender. He says that one day Bhaibawa's wife said to him, "Why do not you go to Waria and see Deepsing?" On which he immediately went there, and, on arriving, he saw Bhaibawa sitting near the door of the house crying, and Bhaibawa told him Deepsing was dead, and particularly requested him to go in and see the body, which he did, and made himself quite certain by close inspection that the infant Thakoor was no more. He came out and asked Bhaibawa what he was next to do, and was desired to go to Ahmode, which, obedient as he appears to have been to all commands, he of course did, and, on arriving there, communicated the intelligence of Deepsing's death to Bhaibawa's wife and Sirdarba.

Anything more improbable than this statement can hardly be imagined. Bhaibawa is supposed to be the chief conspirator, and yet he begs and persuades the witness to enter the house and see the body of Deepsing, and thus secures one witness of a fact which, if he had really been a conspirator, he would have been most anxious to conceal, and he allows him to go to Ahmode without giving him a single caution against divulging the secret there.

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The witnesses Nos. 15 and 20 are both of them discharged servants of the Durbar, and their statements are open to suspicion; moreover, there is an inconsistency in the statement of witness No. 15 (Luka), and that of the last witness (Bapoolal). From the evidence of the Arab, Syud bin Ahmed, we learn that immediately Deepsing died, an Arab named Chaoos was despatched to Ahmode to bring the garee, and Luka says that he received three days' grain from Bapoolal. Now, as no delay appears to have occurred in sending off the garee, and as Bapoolal says he was at Waria and saw the child lying dead, then it follows that, unless we are to suppose Bapoolal was ubiquitous, it is impossible that this statement of Luka's can be true. In a case of this kind, in which, as Mr. Hebbert remarks, "the principal feelings that influence the witnesses may be judged of by their relative position to each party, and they would probably depose to anything they were desired," the very slightest inconsistency must be sufficient to render their evidence of no weight; and under this view I consider the evidence of both Bapoolal and Luka to be utterly unworthy of the slightest credit.

The evidence of Syud bin Ahmed is, as I have before remarked, open to much suspicion, from the fact of his having been discharged from the Durbar. He deposes to having seen Deepsing lying dead at Waria; to the body being placed in the cart, and finally buried on the banks of the river Wusker. It appears that there were three other Arabs, who were also at Waria and assisted to bury the body. These Arabs, it is alleged by the prisoners, were in attendance during the trial, and it is further asserted by them that they begged that evidence might be taken; and why this very reasonable request was refused is to me perfectly incomprehensible.

This statement is supported by that of the witness No. 17, but then his statement appears to me to be so

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improbable, as to render it altogether untrustworthy. It is open to the same remarks as I have made in regard to Bapoolal, and I maintain, that unconnected as this witness was in any way with the Durbar, Bhaibawa would not (under the supposition that he contemplated a conspiracy) have allowed him to see the body of Deepsing.

I do not concur with the Senior Assistant Session Judge that it would have been of no use to search for the body, for there is no reason to suppose that the bones would have been destroyed. Had it been discovered, it would have been the most important evidence that could have been produced, and without it I do not consider the evidence recorded sufficient to establish the fact that Deepsing is dead.

The witness Ladkoba was appointed a curator, and he states that he received a report from the person appointed by him to manage the estate, in the month of October 1851, that Deepsing was dead. He ordered the manager to make himself certain on this point, and was again informed that the matter was beyond a doubt. On being called on for the letters, Ladkoba says he gave them back to the person who wrote them. He says he made a report to the Assistant Judge that Deepsing was dead; but notwithstanding this, Mr. Morgan actually gave Bhaibawa a certificate to administer to the estate of the infant Thakoor in 1852.

The next point is, whether it is proved that the boy now on the gadee is not the original Deepsing.

The real Deepsing is described by the whole of the witnesses for the prosecution almost in the same words. He was 'samlo' or dark; low forehead, with hair on it; marks of firing on the chest, on the back, and on the neck; he had small eyes; and was very thin;—in short, an ill-favoured, sickly child, and as unlike the Deepsing who was before the Court as he could well be depicted.

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Now it is incredible that all these witnesses should have seen and remarked all these marks on the child's person; and the very similarity in their statements is sufficient alone to throw a cloud of suspicion over their evidence, and the shadow becomes darker when it is remembered that their description does not correspond in one single particular with the description of Deepsing found in the descriptive roll kept in the Mamlutdar's Kucheree at Ahmode, while that description does correspond with the marks and the personal appearance of the boy whose position has been the cause of the present inquiry.

The evidence of the witnesses Nos. 21, 22, and 23, being the supposed father, mother, and sister of the child, have been much depended upon in the lower Courts to prove that the boy is not the real Deepsing; but I cannot myself consider that their statements are of much value. The father (witness No. 21), when first shown the boy, positively denied that he was his child. The Assistant Session Judge even now speaks of him as a most unwilling witness. He now says he is able to recognise him; but then it is in evidence that for months past he has been supported, clothed, and even housed, by Futeysing, who would not allow him even to leave his home unless he was accompanied by two of his peons; and, looking at the conflicting evidence he has given, there is but one inference to be drawn, viz. that he has been bought over by Futeysing.

With regard to witness No. 22, the alleged mother of the child, she also has been supported, clothed, and housed by Futeysing. She says the boy is her son, and that she is able to identify him; but this is untrue, for the simple reason that she is perfectly blind, and it is physically impossible that she could recognise him.

The last witness is No. 23, the boy's alleged sister. She is about fourteen years of age, so that, supposing the

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boy to be her brother, and to have been taken away, she must at the time have been eight years old; and yet she would wish the Court to believe, that although she had not seen him from the time he was taken away up to the period when the inquiry commenced, that she is able to recognise him. She also has been living with her father and mother at Futeysing's, and knowing, as I do, the former feuds which have existed in the family for the last forty years, I cannot divest myself of the idea that if there has been any conspiracy, there is fully as much reason to suspect it to have been originated and carried out by Futeysing and his party, to oust the rightful heir to the Thakoorship of Ahmode, as by the prisoners.

Under these circumstances, I do not consider that there is sufficient evidence to prove that the present boy is not the real Deepsingjee, and as it must follow, from this, that there could have been no conspiracy on the part of the prisoners, I would acquit the prisoners, and order their discharge.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

W. E. Frere,
Puisne Judge.

Minute by Mr. Frere.—Of the preliminary exceptions taken by the petitioners to the Assistant Session Judge's decision, and the questions referred to me for decision, the only one of any weight in my opinion is, that all the witnesses summoned by the petitioners were not examined, but that some were dismissed unexamined, without the prisoners' consent being obtained, or any reason for not examining them recorded; and, before coming to a decision on the merits of the case, I think that we ought to have this evidence before us. I would, therefore, return the case to the Zillah, and direct the Assistant Session Judge again to summon the witnesses for the defence, as summoned on the 1st August, and whom he dismissed unexamined, and to take their evidence in presence of both the prosecutor and prisoners, and return it, with

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his opinion upon the weight to be given to it, to this Court.

This, perhaps, is not usual; but there is a patent defect in the trial, and without this evidence I cannot say that the prisoners have had a full trial, and dispose of the petition, and I do not think we are precluded from doing it, though the course is not laid down in the Regulations.

W. H. Harrison,
Puisne Judge.

Further Minute by Mr. Harrison.—I do not think that it would be consistent with the Court's practice to return this case for further evidence to be now taken. If I had contemplated the adoption of such a course, I should have reserved my opinion on the trial. The Session Judge before whom the case went for confirmation might, and ought to have supplied the omission of his Assistant, but it is without precedent, I think, for a case finally closed to be re-opened on appeal for the reception of fresh evidence, even for the defence. The judgment must stand or fall by what we find upon the record.

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—Before coming to a decision on the merits of this case, the Court resolve—there being a patent defect in the trial in the omission of the lower Court to examine all the witnesses called for the defence—to return the papers to the Zillah, and direct that the Senior Assistant Session Judge summon the witnesses for the defence who were summoned on the 1st August and dismissed unexamined, and to take their evidence in presence both of the prosecutor and prisoners, and send it to the Court, with his opinion upon the weight to be given to it.

R. F. Mactier,
Senior Assistant
Session Judge.

Remarks by the Senior Assistant Session Judge on the Additional Evidence.—Received from the Session Judge of Surat, with his endorsement No. 630, of the 17th June 1856, a Precept No. 539, of the 11th June 1856, from the Sudder Foujdaree Adawlut, together with an extract from the Court's proceedings of the same date,

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in the case of the prisoners Bhaibawa Ameersing and others, directing the Senior Assistant Session Judge to take the evidence of certain witnesses for the defence.

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The evidence of all the witnesses named in the Precept having been taken, the proceedings are closed, and the Senior Assistant Session Judge proceeds to record his remarks on the evidence.

The first and second witnesses do not seem to require any particular notice.

Witness No. 3 (Junjee Janee) was said to have been one of the guard who accompanied Mulik Sheikbhaee and his wife and daughter up to the borders of Sind. This he now denies, but, however, says he went to Bakerpoor; and yet he is not a resident of it, and there is no reason given for his going. As to the Rahim mentioned, it is a doubtful matter whether he does belong to Beejanuggur; his residence would rather appear to be Baroda.

Witness Nos. 4 is a resident of Baroda: he says he saw Bhaibawa first when he came to Booa and Ahmode in 1906. This seems to have been *once* only, and if so, is it *likely* Bhaibawa would recognise him when he saw him going on the road before the bungalow, and call him in? If he were a great man, and an intimate acquaintance of Bhaibawa's, it would be different, but he is not: besides, is it likely that three strangers would be called in too, and shown the Thakoor at their own request, when it has been stated that Bhaibawa was particularly shy about showing him at all, or letting any one go near him? The same applies to the first visit of this witness to Ahmode, when he was a perfect stranger. It is to be remarked all through the evidence brought to identify the present boy as Deepsing, that the people called to show this are, by their own statements, admitted into the Durbar at any time, no matter who they are—strangers or others; whereas, when it is

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tried to show that none of Futeysing's party could have seen the child, it is then said that he was kept closely shut up, and no one let go near him but Arabs, and those whom Bhaibawa allowed; and if this were the case, is it likely he would let strangers go for the mere asking to see the Thakoor, and on no previous acquaintance or introduction of any sort? This witness talks, too, of "wheat colour." This would be a very good description, only the name of "wheat colour" ગહુંનો રંગ is used by nearly all the persons who describe the boy said to be Deepsing. This is not the name for the colour, which is 'ghuoolo' (ઘઉલો), and the conclusion to be come to is that it is a made-up name, to be used by all. Again, 'samlo' (શાંમળો), used in speaking of the dead Deepsing, is a Guzerathee word, expressing exactly the dark, dusky colour spoken of, and being so, it cannot be called a make-up, like the other seems to be; *for, if* it were not, why should not the usual word be used?

Witnesses Nos. 5, 6, and 7 are called to show an *alibi* on the part of Balmookun, and to testify that he was not in Ahmode on the 5th of Magh Shood 1908. If it were the case, it would not much signify, for that only would have reference to the swearing together in Nathiba's pursal, which has been before remarked to be insufficient to show conspiracy.

The next three Arabs (witnesses Nos. 8, 9, and 10) are dependents of the Ahmode Durbar, and it may be easily imagined that they, of all people, would stick to what they learned. They all tell the same story of the departure of Bhaibawa to Baroda by night, passing through villages where he was spoken to by Patels, arriving at Baroda, and putting up at Bulwuntrow's bungalow, and then, fifteen days after, starting for the jutra, and being recalled. Their accounts all agree, which is not to be wondered at; but no clear explanation of the *reasons* for this jutra, &c. are given; or why, if

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Deepsing's life was in danger, as they say was the report, he was kept at Waria in an open house or bungalow, instead of at Ahmode in a walled-in building: or why, moreover, he was taken to a foreign territory, where enemies would have a much better chance of making away with him than at Ahmode. There are curious little inconsistencies in their stories, which show what their evidence is worth.

Witness No. 10 says it was moonlight; then that a torch was carried notwithstanding; the reason given for the torch being carried being that the road was dangerous, as if a lighted torch on a moonlight night would make such a difference to a party of eight or nine armed Arabs. The reason for mentioning it seems to be to get in the name of another witness, Narun Hajam, who has before given evidence of a similar nature to this. Then, again, the words 'gareewan' and 'nudee' were used by these Arabs even in speaking to the interpreter, who, being asked about this, said they used them as if they were Arabic: the first they *might* have picked up from hearing the driver called to as "gareewan," but to use a Guzerathee word for a river in Arabic conversation, when there are plenty of Arabic words to express the meaning, looks very suspicious, and gives the idea that the sending back of the Arab Chaoos (witness No. 10) from the river (nudee) is an incident made up, and introduced to make the whole story appear credible, from being told in the same way by several persons.

Witness No. 9 appears formerly to have been in the service of Bulwuntrow, the arch plotter and originator of the whole conspiracy, and immediately on his death to have been taken into the employment of Bhaibawa, obviously to keep him quiet, and to get him to adhere to Bhaibawa's side. Having been a Jemedar in Bulwuntrow's house, he would know everything that had gone on, and it was the least Bhaibawa could do to keep him on in

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his own service, and thereby secure to his party a witness whom the other side would have found most valuable had he been disposed to join them.

Witness No. 10 has been in the service of the Ahmode Durbar people for several years: he is not the man now to turn round and speak against them; and the story he has told is just what might have been expected from him. It will be perceived that, in his deposition before Choonilal, the Magistrate's Sheristedar, this witness mentioned Luka as the driver of the garee that went to Baroda: this must be the Luka Boodur, who is a witnees (No. 15), and deposed to having taken the body of the dead Deepsing on the way to Baroda from Waria.

This seems to be all that can be said on the evidence now given, and the Senior Assistant Session Judge must say, that hearing it has not altered his opinion of the whole case in the least. As to the Arabs, they are servants, and would of course speak for their master; and it might be asked who these men are? They are such characters as no person in a respectable condition would keep near him,—lawless, quarrelsome, and ready to turn their hands to any evil deed that may be pointed out to them. Two men of this very description, when the preliminary investigation of this case was going on, quarrelled, and the one murdered the other in the open street of Broach, and then made off; and it is the evidence of characters such as these that is offered, and held up as more worthy of credit than that of people in a respectable rank of life, well off, and who have nothing to hope or fear from either side,—who have solemnly declared the boy shown them to be their own relation, born in Baroda, and *not* to be Deepsing, as it has been the object of the conspirators to show; and the Senior Assistant Session Judge, in firmly believing the evidence of these last, of course entirely discredits that of the Arabs and others who have now been examined.

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Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—Full execution of the within Precept is hereby certified to the Sudder Foujdaree Adawlut, as will appear from the return of the Senior Assistant Session Judge at Broach, No. 336, of the 13th September 1856.

The Guzerathee papers and proceedings will be forwarded by the steamer "Phlox" in one parcel to-morrow or the next day. The Senior Assistant Session Judge's English proceedings accompany this.

Further Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—The Session Judge is to be requested to report, with reference to his letter of the 11th ultimo, No. 860, what steps have been taken towards completing the case.

Further Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—In reply to the extract of proceedings accompanying this Precept, the Judges of the Sudder Foujdaree Adawlut are referred to the papers submitted from this Office on the 16th instant, with their Precept No. 539, of the 11th June last. The original petition is herewith returned.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—Had I not been satisfied by the evidence for the defence that the conspiracy in this case was proved, I should at once, when the case was referred to me, have consented to annul the Assistant Judge's conviction and sentence; but when I saw in the evidence for the defence sufficient proof of guilt, and although other witnesses called for the defence had not, as they ought, been examined, I felt that justice would be defeated were the Assistant Session Judge's decision annulled merely because these witnesses had not been examined; so, as I could not reject the petition, so long as any witnesses who ought to have been examined for the defence were unheard, the case was returned to have all the witnesses for the

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defence examined, and we have now before us all the prisoners have to adduce, and we can with safety come to a decision on the case.

The conspiracy these prisoners are charged with having formed had its origin in a visit which the prisoners Bhaibawa and Hutoomia paid to Baroda on or about the 7th October 1851, of which the complainants say the prisoners availed themselves to bury Deepsing and procure a child to substitute for him. The prisoners say that they went there only on their way to pay a vow of Deepsing's at Dakore.

The account of the journey which I have been able to extract from the evidence for the defence is as follows:—

Rajooba (witness No. 75), who had taken care of Deepsing from the time he was born until she left him at Baroda in the middle of October 1851, says that Deepsing was six or seven months old when his father Jeetsing died, about six or seven years ago, and that a year after that his mother Tukutba died, and that, in consequence of a dispute between Gemulsing and Bhaibawa, Deepsing was taken to Waria, though he used sometimes to come to Ahmode; that during the three years she had charge of him he had been twice ill, and Fukeers came to make 'manut' for him; that he fell sick in Bhadrupud (August—September), and got a little better in six or seven days, and then the Fukeers were feasted, and a month after that (7th October 1851) he went to Baroda. An arrangement, she says, had been made beforehand to go to the jatra. Tukutba, when Deepsing was three or four months old, and also when she was ill, said that Deepsing should have his head shaved after being taken to a jatra, and this is the reason Rajooba assigns for their leaving Waria.

Jejeebhaee Bhugwan (witness No. 69) says it was because Deepsing had a manut, which is done by people to keep them well. Tukutsing (witness No. 70) says it

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is done by people when they wish anything to succeed that they undertake, but he does not know what Deepsing's undertaking was. Rugoonath, the cartman (witness No. 73), too, says they left Baroda to perform manut; so it is not very clear whether they were going to the jatra at Dakore, or going to Dakore to perform a vow: however, from the statement of Jejeebhaee (witness No. 69), it appears that Deepsing and Rajooba left Waria in a cart driven by Rugoonath, with Narun with the torch, and Bhaibawa and Hutoomia on horses, accompanied by two or four Arabs, and went towards Baroda some time after seven o'clock in the evening.

Rugoonath, the cartman (witness No. 73), says that Chaoos the Arab (his name appears to be Seyd bin Oomer) came to Ahmode, whence he was to take the cart to Waria, and in this he is borne out by Seyd bin Oomer (witness No. 11 of second inquiry); that until then he never knew that Deepsing was going to perform a vow; that he did not tell Sirdarba and Nathiba that the garee was going away, as it was by Bhaibawa's orders that they were going to Waria, and it was late. Seyd bin Oomer (witness No. 11) says Deepsing was taken to Waria, as there was a dispute between Bhaibawa and Gemulsing. Rajooba (witness No. 75) says they set out from Waria about 8 P. M.; that at Rameshwur Bhaibawa sent back his horse, and got into the cart, telling Chaoos, who took back the horse, to bring money for their expenses on the road, he not having brought money at first because Dwarkadas was not present. Concerning this order about the money Chaoos (witness No. 11) was not examined.

I shall not notice where they say they stopped, nor whom they met on the road, as that is of no importance, but next day Rugoonath (witness No. 73) says they arrived at Baroda at sunset;—there was no cooking done on the way. On the second day after getting to Baroda,

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Rajooba (witness No. 75) says Bulwuntrow came to see Bhaibawa, and six or seven days after she got fever and went home to Gumnad. From that time one Hurjeebhaee had the care of Deepsing, and has care of him now. She mentions that they made the journey from Waria at night because Bhaibawa said it was hot; they must, however, have travelled also in the day, and that Rugoonath (witness No. 73) says they did, because there was jungle, and no place to put up in.

They stopped, he says, at Baroda about fifteen days, and then set out at midday to perform manut, and got as far as Chanee, and then a 'sowar' from Bulwuntrow overtook them, and they went back to Baroda to Bulwuntrow's 'havelee,' and there he and Narun the torch-bearer were kept one day, and then went back to Ahmode. The reason why they did not go to Bechrajee was, because the sowar who came to call them back said that there was a talk that the Thakoor was dead; the sowar told Bhaibawa so, and deponent does not know why Bhaibawa remained at Baroda and did not return to Ahmode.

From Govurdhun Nursee (witness No. 82) we learn that he was sitting by Bulwuntrow on the day of the Dewalee (24th October 1851), and a 'jasood' came, who had been sent by Sumbooram, and asked where the Thakoor of Ahmode was. Bulwuntrow said he was going to the jatra at Bechrajee and had probably set off, but he would find out. Govurdhun was sent the next day to the bungalow to inquire, and then found that the people had gone. He told this to Bulwuntrow, who sent him to see why Sumbooram asked about the Thakoor, and was told by Sumbooram that a relation had made a complaint, and that was the reason; he told this to Bulwuntrow, who sent the sowar to call Deepsing.

Bhaibawa and Hutoomia remained at Baroda, and Seyd bin Ali (witness No. 84) says they remained with

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Gunputrow, because there was a report got up about Deepsing being dead, and Bulwuntrow said that they must stay with him, or charges would be made against them, for he said that in Deepsing's father's time the same story had been told.

However, at the end of three months after he left, we hear from Tukutsing (witness No. 70) that Deepsing came back from the jatra, and Bulwuntrow came to Ahmode. Deepsing came with him; both came from Baroda. Meanwhile Tukutsing, who had remained in Ahmode during the three months, heard reports from many people that Deepsing was dead.

From Daroobhaee (witness No. 78) we learn that while Bulwuntrow was at Ahmode, he (Bulwuntrow) attended before the Mamlutdar, because there was an investigation arising out of a complaint made that Deepsing was dead, that he had died on the road to the jatra, and Bulwuntrow was in the business.

Jewunram (witness No. 71) heard in Margsheersh (November—December) that Deepsing was dead, and money was not sent to him to carry on an appeal then pending before the Judge; and Ladkoba, the curator of the estate, on the 15th October, a week only after Deepsing went to Baroda, writes (No. 122) to Dwarkadas to "go to Baroda and return very shortly, and report to me the whole of the circumstances." So that there can be no doubt but that, within a fortnight after Deepsing left Waria, reports of his death were common, and were communicated to Bhaibawa, who admits (No. 47) that he was called upon, and showed the lad to Sumbooram; notwithstanding this Bhaibawa did not return to Ahmode for three months. How he spent his time at Baroda, or why he remained there, his witnesses do not show. Nor can I find that he ever appeared with the lad in his charge before any European Officer till Chuitru 1909, (March 1853,) when, according to Jeevunram (witness

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No. 71), Deepsing came to Surat, and Mr. Hebbert, being informed, admitted the appeal, and then an order came from Broach to send Deepsing to the Magistrate, a year and a half after Jeevunram had heard of his death.

Prisoners or their counsel will, I suppose, in course of time, learn that when they attempt to defend themselves from a charge well substantiated against them, it is not sufficient to throw doubts upon the evidence for the prosecution, but that they must prove their own case. It is not enough in this case to deny the charge, and declare that Deepsing is still alive; but Bhaibawa, if he wishes the evidence for the prosecution to be set aside, and his protestations of innocence to be believed, must account, and that satisfactorily, for his own and Deepsing's movements from the time he left Ahmode to his reappearance some two years after before the Magistrate; but in the defence Bhaibawa's proceedings during his stay at Baroda are passed over in silence. Govurdhun (witness No. 82) mentions that Gemulsing came to Baroda at the Dewalee in 1907, and that he heard him ask Bulwuntrow to bring about some arrangement as to the guardianship, and if not he should not let him rest; they stayed four days, and Bulwuntrow told him he would call him when Bhaibawa returned from Bechrajee. He also heard that Futeysing and some more people had come to Baroda and stayed some twenty-two days, and he was asked by the Gaekwár's Karbaree (Madowlal) if he knew anything of the boy that was bought. All of which corroborates the evidence for the prosecution, but does not account for Bhaibawa's stay at Baroda.

The hurried departure from Ahmode and Waria without money for their expenses; the delay at Baroda and Rajooba's return from thence, giving up the care of the child that she had had for the last three years, and which she has never resumed; their not proceeding towards

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Dakore until the day after reports had arrived of Deepsing's death, and then still delaying at Baroda after inquiries were instituted; and not producing the child before any European Authority for a year and a half, give much room for doubting whether all their deeds were honest.

The prosecutors come forward, labouring under the disadvantage of this not being the first time that an attempt has been made to prove the heir to the Thakoor of Ahmode spurious. I have, therefore, seen in the first instance how nearly the prisoners exculpate themselves, for if they made any approximation to that, I should have proceeded to consider the evidence for the prosecution with the greatest distrust. As it is, however, I see no grounds for doubting the evidence for the prosecution, so far as it has been upheld on appeal by the Session Judge, and I am satisfied that Deepsing died at Waria, and was buried on the banks of the Wusker; and that his body has not been found is not to be wondered at, considering the length of time that elapsed between the supposed burial and search, if any was made for it. I am further satisfied that during the three months they were at Baroda, Bhaibawa and Hutoomia purchased from his parents a boy named Shabhaee, whom they have substituted for Deepsing Jeetsing, the late Thakoor of Ahmode, and consequently that Bhaibawa and Hutoomia have been guilty of conspiracy.

Against Dwarkadas, who admits having made a report that Deepsing was said to be dead, there is his own handwriting in the letters entered D, F, G, J, K, and L, and sufficient other evidence to include him in the conspiracy, of which the letter recorded B shows he must have been aware.

I cannot find anything in the letters E and H to implicate Balmookun in the charge. They may, of course, be explained to refer to this case, but they may also refer to any other Borahs in the Broach Zillah or at

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Baroda; but the evidence of witnesses No. 15 (Luka), No. 20 (Muleek Shabhaee), No. 23 (Mariam), No. 24 (Kursun) and No. 35 (Seyd Rusool) satisfy me that he took a part in this conspiracy.

I cannot find any mention made of Wudoo by Kursen Doola (witness No. 24), and what Luka (witness No. 15) and Mahomed Sheriff Sheik (witness No. 32) say of him is not, I think, sufficient to implicate him in a conspiracy. Moojathkan (witness No. 33), whose evidence against Wudoo the Assistant Session Judge does not notice, gives more damaging evidence than either of the others, and his name being mentioned in some of the letters, might have led to more stress being laid upon what the witnesses say of him than I think it ought to bear. I would, therefore, acquit him, but the petitions of the others must be rejected.

It has been urged by the counsel for the prisoners that the case has been unfairly tried; that it should have been proved, in the first instance, by a Civil Suit that the lad was not the lawful heir to the late Thakoor; and then, but not till then, that a charge of conspiracy should have been framed. That, in ordinary cases, would be the proper course to pursue; but there is nothing either in law or justice that makes that course compulsory. It is always tedious; and in a case so clear as this appears to me, I think it very desirable that the delinquents should be brought to justice and punishment at once, without waiting for the conclusion of the protracted proceedings of a Civil Suit and its attendant appeals.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—The additional evidence for the prisoners ordered to be taken has now been certified. It does not, with the exception of one witness, touch that part of the case from which I came to the conclusion that the guilt of the prisoners was to be justly inferred, and to that witness I attach little importance. He had been, he admits, to the borders of Sind, but not,

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R. Keays, Puisne Judge.

as he alleges, in company with the child's parents. Why he went is not explained.

I adhere to the opinion that the appeal should be rejected.

Minute by Mr. Keays.—The only additional remarks I have to make are, that had the present evidence been taken, as it ought to have been, at first, it would have given a preponderance to the evidence for the defence: even as it is, I do not consider that the death of the infant Deepsing is proved. No body has been found; and, although we learn from the evidence before the Magistrate a search was made for it very shortly after the supposed death, there were no appearances in the place which would indicate the supposition, put forward for the prosecution, that the body had been buried by the prisoners.

The present alleged to be spurious boy corresponds in colour, appearance, and marks exactly with the description of him found in the Government record, and it has been nowhere shown that that record has been tampered with. If we are to believe that Deepsing was black, and marked differently from this record, I can only come to the conclusion that the whole of the evidence for the prosecution is false; and I really do believe that it is.

The most important feature in the case is the protracted residence of Bhaibawa with Deepsing at Baroda, and the somewhat unsatisfactory manner in which the necessity for this journey has been accounted for. This, however, does not prove Deepsing's death, and I consider that his accompanying his grandfather to Baroda was natural, and, considering the antecedents, and the number of fraudulent attempts made by the prosecutor's party to obtain possession of the gadee, an absolute necessity.

The additional evidence now taken proves that

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the so-called spurious child is Deepsing. It was most unfair to the prisoners that the evidence of these additional witnesses was not taken at first. They were present in Court at the time; they were really and truly the only evidence the prisoners could bring to establish the truth of their story, for the whole of Deepsing's household, the parties who could have identified the boy, had been (unjustly too, as the result of the trial has proved) indicted as conspirators, and yet their very reasonable reiterated request of the prisoners that they might be examined was refused. Even now that their evidence has been taken, its value has been disallowed, on grounds which are absolutely absurd, for I can see nothing more extraordinary in a person living in Guzerat for a long period of years being able to speak a few words of Guzerathee, than there is in the Senior Assistant Session Judge himself being able to do so.

Then, again, it is urged that because two of the Arabs quarrelled in the street of Broach, one killed the other and ran away, that they have one and all of them committed perjury.

I cannot help placing on record that I am dissatisfied with the manner in which this trial has been conducted.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence on prisoner No. 7 (Wudoo Bhugwan) are annulled, and this prisoner is to be discharged.

The petitions of the other prisoners are rejected.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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AHMEDABAD.

[Petitions to the Sudder Foujdaree Adawlut. Referred for Report to the Magistrate of Ahmedabad, J. W. HADOW, on the 10th and 24th October 1855.]

Security for Appearance.

On the 10th October 1855, Nurseedas Suntookram petitioned the Sudder Foujdaree Adawlut that an order by the Magistrate of Ahmedabad, requiring security for appearance, might be annulled. There were two other petitions to the same effect presented the same day, one from Hureesing Dossabhoy and two others, and the other from Bechur Thakursee; and a fourth was presented on the 24th of the same month from Bhowaneeshunkur Doolubhram, containing the same prayer.

The petitions were referred by Precepts for report to the Magistrate on the dates they were presented; and on the 27th and 28th December 1855 he reported that all the petitioners had been required to furnish security, pending the final disposal of a case in which they and others had been committed to take their trial before the Session Judge on a charge of conspiracy; and he added, in respect to Bechur Thakursee, that he was a man of bad reputation.

The Magistrate was then (16th January and 6th February 1856) called on to report more in detail on the subject, and to state whether the charge of conspiracy had been disposed of; whereupon, on the 29th February 1856, he made return as follows in the cases of Nurseedas Suntookram and of Hureesing Dossabhoy and others:—

"In reply to the within Precept, the Magistrate begs to refer the Judges to the extract from the proceedings of the Sudder Foujdaree Adawlut, dated 8th March 1854, in the consideration of his return to the Court's Precept dated 12th October, No. 967, and his letter to the Judicial Commissioner on circuit, dated 16th February 1854, in the case

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of Bhugwutsingjee Kursonsingjee, Thakoor of Sanund, and that of the finding of the Acting Session Judge in Case No. 129 of 1853, and state that, as the complainant, who appeared as prosecutor in the case, had not even been called into Court, and as his witnesses had not been examined, it appeared to the Magistrate that no trial had in reality been held, and that the proceedings of the Assistant Session Judge, in thus summarily disposing of so important a case, were illegal; and it was with a view to a recommittal of the prisoner, either on the same or some other charge, should the formal acquittal recorded by the Assistant Judge prevent the adoption of the former course, that bail was required from them, pending the final disposal of this case, and other charges subsequently preferred against some of the same prisoners. On being informed of the result of the further investigation into these charges made by the First Assistant Magistrate, it is the Magistrate's intention to suggest, for the consideration of the Judges, whether the acquittal recorded by the Assistant Judge might not be annulled on the ground that no trial was held, as was done in the case of Vishnoo Bulal, recorded at pages 75 to 85, Vol. II., and pages 52 and 59, Vol. III. of Morris's Reports, and in consideration of the circumstances which had subsequently been brought to the knowledge of the Magistrate, in connection with a large bribe alleged to have been paid in the Adawlut, in consideration of which an assurance was given that the prisoners would be acquitted in the way they were."

In the case of Bhowaneeshunkur Doolubhram and Bechur Thakursee, he reported, in the first instance (1st February 1856), that they were implicated in charges subsequently preferred; and on the 29th of the same month he made a second return as follows:—

" In reply to the extract from the Court's proceedings which accompanied this Precept, the Magistrate of

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Ahmedabad has the honour to state, in reply to the query put to him in the Court's Precept No. 89 of 1856, that he is unable to perceive in what part of the petition allusion is made by petitioner to a charge of conspiracy in which he was concerned having been disposed of.

"The cases alluded to in the Magistrate's return dated 1st February, as having been referred to the First Assistant Magistrate for disposal, is one of conspiracy, in which there can be no doubt that petitioner, together with others, conspired, petitioner being the chief instrument, with the object of establishing, by false evidence, a charge against the senior wife, since deceased, of the Thakoor of Sanund, of having received from the dismissed Karbharee, and passed off as a son born to her, a child which he (the Karbharee) had stolen from a woman, who, on inquiry, was proved to be a common prostitute of the city of Ahmedabad, and who had been instigated by petitioner to come forward and swear to the child being hers, and that she had entrusted it to the care of the Karbharee's sister, as she was unable, from disease, to nurse the child herself. The other case referred to was the alleged payment of bribes, the object of which was to obtain the acquittal of the prisoners in the conspiracy case committed to the Court, and a favourable decision as regards the reported illegitimacy of the child stated to have been born to the wife of the Thakoor, the inquiry into which, which involved the examination by midwives of the lady, in order to ascertain whether she had or had not been delivered, had been undertaken by the Political Agent at Sadra, in whose jurisdiction the lady was at the time she gave birth to the child. Proofs had been promised, and were produced after considerable delay, in support of these charges, but the testimony of one of the chief witnesses (in whose name a sum of money had been subsequently debited as paid to him by the Durbar, which sum of money formed a portion of the bribe stated

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to have been paid in the Adawlut, and had, there can be no doubt, originally been so debited in the Sahookar's books) is still wanting to complete the chain of evidence. As this witness was not forthcoming, delay occurred in the disposal of the accusations against the prisoner."

The Court next (12th March 1856) addressed the Magistrate with reference to the case of Nurseedas Suntookram as follows:—" The Court can find nothing in the Magistrate's return to account for the extraordinary delay which has occurred in the disposal of the charges, whatever they are, against the petitioner. They therefore direct the Magistrate to bring the proceedings to a close, without further procrastination, and to report having done so. The Magistrate is also to report why the case of this petitioner is not entered in the Quarterly Returns of untried prisoners."

In the case of Hureesing Dossabhoy and two others, he was directed to follow the same course; and in the case of Bhowaneeshunker Doolubhram and Bechur Thakursee, he was required to certify the security bonds taken from them, and to report whether certain witnesses, whom he had described as wanting, had been procured; and whether the cases had been disposed of: he was also directed to state why all notice of the cases had been omitted from his Quarterly Returns.

To these Precepts the Magistrate made return by reporting in regard to Nurseedas Suntookram and Hureesing Dossabhoy and others, on the 24th April 1856, that the disposal of the charges had been delayed, as he had been informed by the First Assistant Magistrate, owing to the difficulty experienced in obtaining the attendance of certain witnesses from the Mahee Kanta; that it was not the practice in his Office to procrastinate the disposal of cases of this nature; and that, had the original case of conspiracy, when committed for trial before the Sessions Court, been properly disposed of, instead of the accused being

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acquitted without a trial, there would have been no occasion to adopt further proceedings in connection with the case. He further reported that the proceedings would be brought to a close without any unnecessary delay, and that the investigation of the charges having been more of a Police nature, and preliminary to framing formal charges, should the evidence appear sufficient, the case was not entered in the Quarterly Return, it not being usual to enter such cases.

With regard to Bhowaneeshunkur Doolubhram and Bechur Thakursee, the Magistrate, on the 5th May 1856, certified the security bonds called for, and at the same time reported that the witnesses alluded to had not been procured, and that without their attendance the cases could not be properly disposed of; and he added that the reason for the omission of the cases in the Quarterly Return was the same as in the case of Nurseedas Suntookram.

The Court having considered these reports, recorded the following resolution on the 21st May 1856, in respect of Nurseedas Suntookram:—

"This petitioner has, it appears, been lying under criminal charges of some kind or other for more than two years, and the Magistrate was, on the 12th of March last, required to bring the case to a conclusion without further delay. It does not appear, from the present return, that it has been yet disposed of. There has, however, been ample time to bring any prosecution deemed necessary to a close, and it cannot be allowed that a person should be held under surveillance for an unlimited period under such circumstances as are reported.

"The Court cannot but censure the Magistrate for evading compliance with their instructions, and he is again required to dispose of the charges against the petitioner, and to report within ten days from receipt of Precept that he has done so, or give a sufficient reason for non-compliance.

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"The Magistrate reports that this case is not included in his Quarterly Return, because it was in the Police Department. The Court did not expect to find a Magistrate of Mr. Hadow's experience offering such an excuse as this for disregarding their orders. He is, however, now to be called upon to report how many persons he has in custody or on bail, charged with offences, whose cases he omits from his returns on such pretexts as this."

The Magistrate was further referred to these remarks in respect to the other petitioners; and in his return (23rd June 1856) to the Court's Precepts on the subject, he stated that the petitioners alluded to were tried on a charge of conspiracy by the First Assistant Magistrate, Mr. Ritchie, who, not considering the evidence sufficient to warrant their committal, dismissed them on the 22nd May, and allowed them to return to their homes, with a warning that they would have to attend again should their presence be required, before the Authorities. He further begged to state that the disposal of the cases had been delayed after the papers had been forwarded by the Magistrate to the First Assistant Magistrate, owing to the non-attendance of witnesses residing in the Mahee Kanta districts, who had been repeatedly written for, and whose evidence, from what the complainant urged, was likely to be of material importance in connection with the charge.

At this stage of the proceedings the Court recorded (16th July 1856) as follows, in regard to the case of Nurseedas Suntookram :—"Petitioner having been discharged, no further order is necessary on the petition. The Magistrate's return to be brought on when the returns are received on the petitions of Bhowaneeshunker and another."

But in the mean time, some points noticed in the Court's Precept of the 21st May 1856, having been left unnoticed by the Magistrate in his several returns,

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further Precepts were issued to him; and on the non-receipt of returns thereto the following resolution was recorded on the 24th September 1856 :—

"It appears that after acquittal in the Sessions Court on a charge of conspiracy, the petitioners have been detained upwards of two years by the Magistrate of Ahmedabad, with the view to their prosecution again upon the same or some other charge; that their names have been omitted from the Quarterly Returns of accused persons on the frivolous pretext that it was a matter in the Police Department, and that since the 10th October 1855, when the Magistrate was first called upon to report on their petitions of appeal, until the 22nd May 1856, when, so far as the Court can ascertain, they were released, the Magistrate has evaded compliance with the Court's requisitions, and only on the latter date discharged the petitioners, against whom it appears that no charge at all can be sustained.

"The Magistrate has taken no notice of the Court's requisition to report how many other persons he has in confinement under like circumstances; and as he will not comply with the Court's calls made upon him for further information, it is useless to again repeat these calls, until he has received some intimation of the opinion of the Right Honorable the Governor in Council on his conduct, and, with a view to the expression of such opinion, the case is to be reported to Government. It is impossible for the Court to exercise a control over the administration of justice in distant provinces, if a Magistrate is to set the Court's orders and Precepts at nought, and choose whether he will reply to calls for explanation, and whether he will enter cases in which authority is abused by the unjust detention of accused persons, or whether he will omit them altogether from his returns."

Subsequently (14th October 1856), the Magistrate

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made the following return to the Court's Precept on the case of Nurseedas Suntookram:—

"In execution of the within Precept, the Magistrate of Ahmedabad has the honour to report, that Mr. Ritchie, First Assistant Magistrate, closed the investigation into the charges against Nurseedas Suntookram and others on the 3rd May 1856, and reported on having given the accused permission to return to their homes, the evidence produced not being in his opinion sufficient to warrant a committal to the Sessions Court.

"The delay which had occurred in bringing the investigation to a close was chiefly owing to the number of witnesses who had to be examined, the quantity of documentary evidence produced at different periods, and the difficulty experienced in obtaining witnesses from the Mahee Kanta villages.

"In consequence of the non-attendance of thirteen of these witnesses who had been summoned, and for whose attendance the Political Agent had been twice written to, the proceedings were brought to a close; the First Assistant Magistrate explaining in his record that, 'had the witnesses arrived in time, their evidence would have been incorporated in these proceedings, but these have already been delayed too long to admit of further adjournment.'

"The Magistrate would beg respectfully to state that pressure of business, and the difficulty experienced in obtaining the attendance of witnesses, alone delayed the conclusion of the investigation in this case; and he feels assured that were the Judges to call for the whole of the papers connected with the case, they would acquit the Magistrate of having unnecessarily prolonged the inquiry.

"As regards the exclusion of the case from his Quarterly Return, the Magistrate has only to express his regret at the omission, and that the explanation given of it has been considered unsatisfactory. The Magistrate begs to

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state that he did not direct the case to be excluded, and only became aware of the omission when it was brought to his notice by the Judges: for not having himself noticed it and caused it to be rectified, the Magistrate is aware that he is to blame, but the Judges will, the Magistrate is hopeful, make some allowance for the heavy pressure of business in his Office;—he will take care that such omissions do not occur again.

"The Magistrate begs to state that there were no other persons in custody or on bail charged with offences undergoing investigation whose cases were omitted from the returns."

This return, and three others received with it, were then (12th November 1856) ordered to be recorded.

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Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

KAIRA.

[Petition of Jeythabhaee Narainbhaee to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Kaira, J. R. MORGAN, for Report, on the 1st October 1856.]

Dispute respecting Property.

Petition of Jeythabhaee Narainbhaee to the Sudder Foujdaree Adawlut.—[Praying that the order to make over his property, on a mere petition, to the opposite party, might be set aside.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to report in English and Guzerathee upon the matter set forth in the accompanying petition, presented to this Court by Jeythabhaee Narainbhaee, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning this Precept duly executed, the Magistrate of Kaira has the honour to report as follows:—

From the petition of Jeythabhaee Narainbhaee, herewith returned, it will be evident to the Judges of the Sudder Court that there is a family dispute between the petitioner and one Jeeba, widow of Goolabsing Kakoojee, as to the right of some houses in the town of Kuperwunj, with which dispute the Magistrate is of opinion he has no concern whatever, the Civil Courts being open to the party aggrieved.

With respect, however, to the petitioner's representations, the Magistrate begs to state, that the woman Jeeba having complained that the petitioner Jeta Narainbhaee and others had broken the lock of the door of a

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house in her possession, and taken possession thereof, and stolen therefrom various articles of jewelry, inquiry was instituted before the Police Authorities at Kuperwunj, when the woman having no evidence in support of the alleged robbery, no further inquiry appeared called for, and evidence was merely taken on the part of the woman on the point as to whether the house was in her possession or not.

It having been reported by the Police Officer of Kuperwunj that the house was in the possession of the woman Jeeba, and that she had been ejected, and that Jeta Narainbhaee had taken forcible possession, the First Assistant Magistrate issued an order that the woman Jeeba might be put in possession of the house, leaving the question as to the right thereof to be decided by the Civil Court.

On an appeal from the petitioner, the Magistrate called for the proceedings, and, seeing no reason to interfere with the decision come to, confirmed the order.

The Magistrate, in conclusion, begs to report that the woman Jeeba has been placed in possession of the house in dispute, and that security has been taken from both parties for the purpose of preventing a breach of the peace, and is of opinion that the petitioner should be referred to the Civil Court, should he wish to prove his right to the house.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoner is rejected.

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Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

AHMEDNUGGUR.

[Proclamation issued by the First Assistant Magistrate of Ahmednuggur, F. S. CHAPMAN, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 23rd October 1856.]

Proclamation by the Magistrate.

Proclamation.—Information having been received from the Probationary Police Amuldar of Kopergaum, No. 217, dated 16th October 1856, that a fair is to be held on the 14th of Kartik Shood, *i. e.* 11th November 1856, in honour of an idol called Bhyroba, at the village of Rahatey, in the Patoda Talooka, and that the practice of swinging people by the hook will be resorted to: it is therefore hereby notified to the public, that, considering the objectionable nature of this practice, people assembling at the above fair are prohibited from having recourse to it. Any person disobeying this Injunction will, in accordance with Regulation XII. of 1827, Section XIX. Clause 6th, be liable to be sentenced to one month's imprisonment, or fined to the extent of one month's income.

Letter from the First Assistant Magistrate in charge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward a copy of a Proclamation issued this day in accordance with Regulation XII. of 1827, Section XIX. Clause 6th, prohibiting the practice of swinging by the hook at the village of Rahatey, Talooka Patoda.

The Court are aware that Government have, by their Resolution No. 2974, dated 29th August 1856, expressed their wish that this objectionable practice should be put a stop to, and the above is the only legal means that I am aware of for giving effect to their wishes. The prohibition is not calculated to occasion any religious excitement or serious discontent.

Resolution of the Sudder Foujdaree Adawlut.—To be recorded.

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The First Assistant Magistrate is to be requested to report the effect and result of this Proclamation.*

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges. 1856 November 13.

POONA.

[Injunction issued by the Magistrate of Poona, D. DAVIDSON, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 3rd November 1856.]

Injunction, under Regulation XII. Section XIX. of 1827.—Whereas persons have been in the habit of dirtying the water in the tank on the south side of the village of Khundala, Talooka Mawul, Zillah Poona, by washing cattle, clothes, or other articles in it, Injunction is hereby given, that in future, if any one be found dirtying the water in this tank, and rendering it unfit for drinking, he will be punished according to law. Injunction by the Magistrate.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward copy of an Injunction (with its translation) issued by me in the village of Khundala, Talooka Mawul, in this Zillah, under Section XIX. Regulation XII. of 1827.

Resolution of the Sudder Foujdaree Adawlut.—Recorded.

* *Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.*—In returning this Precept, the Magistrate has the honour to report that the "effect and result" of the Proclamation issued were perfectly satisfactory. No one ventured on the practice of hook-swinging, or, so far as is known, regretted its prohibition.

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Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

BROACH.

[Case No. 10 of the Criminal Return of the Magistrate of Broach for September 1856. Tried by the Deputy Magistrate, NOWROJEE BYRAMJEE, on the 4th, 5th, and 12th September 1856. Confirmed by the Magistrate, G. INVERARITY, on the 16th September 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Keeping and Concealing Smuggled Opium.

Prisoner.—Bugus Nutho, Borah, aged 45.

Charge.—Keeping and concealing smuggled opium; in that, on the 2nd September 1856, (corresponding with Sumvut 1912, Bhadrupud Shood 3rd), in the town of Broach, he was found in possession of 10 Bengal seers and 48 tolas, or 22 Surat seers and 34 tolas of smuggled opium, in contravention of the provisions of Regulation XXI. of 1827, Section IV.

Prisoner pleads not guilty.

Nowrojee Byramjee, Deputy Magistrate.

Finding and Sentence by the Deputy Magistrate.—The evidence of witnesses for the prosecution shows that prisoner was found conveying smuggled opium, and, when stopped and interrogated, he misrepresented the place of residence, &c.; that, when questioned by the Foujdar and the Superintendent of Police, he confessed he bought the opium on his own account for Rs. 125, at Inguria. The prisoner, in his defence, denies he bought or brought the opium himself, and states that he acted as a mere hired labourer for a Bunya who was the real culprit, and cites two witnesses in support of his assertion that the Bunya did hand him the bag of opium found by the Peons in his possession. Independently of the improbability of this supposition, arising from the fact that, if such had been the case, he (the prisoner) would have instantly pointed out to the Peons the Bunya, who he says was walking some twenty paces in rear of him; and that, even if we grant

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that the Bunya, seeing the prisoner captured, made himself scarce, so as to get out of sight, he would at once have mentioned the fact to the Peons, or to the Foujdar, or even to the Superintendent (all which he admits he did not do, because, he says, of his having been frightened out of his wits at the time). Independently of this inherent improbability, which alone is sufficient to indispose us to accord our credence to his story, the depositions of his witnesses are so discrepant with each other, and conflict so much with the prisoner's own statements, that it is impossible to believe him. The prisoner states the Bunya had a red 'turban' and an 'angrika,' 'dhotya,' and a 'dupeta' or 'cumurbund.' One of his witnesses makes him (the Bunya) wrap round the dupeta on his head, which was destitute, he says, of a turban; whereas the other represents it to have been crowned with a turban, but forgets its colour, and denies he had any dupeta or cumurbund. Again, the prisoner admits he had the 'bookanee,' which he says was not meant to conceal his countenance, but to protect an ulcer from being molested by flies, &c.; whereas his witnesses say he had none. Once more: the prisoner is silent as to the cause which induced the Bunya to request the prisoner to convey his bag to Saloobhoy's 'chukla,' whereas one of his witnesses states it to be a hurt occasioned by the pricking of thorns and breaking thereof in his foot, and the other represents fatigue and exhaustion to be the reasons assigned by the Bunya.

For the reasons thus set forth above, the Deputy Magistrate considers the plea set up by the prisoner to be utterly untenable and inadmissible, and, in consequence, finds the prisoner guilty of the offence laid to his charge. The prisoner is accordingly informed that he is convicted of the crime set forth in the indictment, and that, as soon as the value of the smuggled opium is ascertained on the sale by auction, he will be directed to forfeit

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double the ascertained value, and double the amount of duty leviable on it, in accordance with Regulation XXI. of 1827, Section IV.

* * * * * * *

Read and recorded a reply from the Deputy Collector, informing the Deputy Magistrate that the value in question, ascertained on sale by public auction, is Rs. 143-3-11, the double of which is Rs. 286-7-10, and double the duty leviable thereon, at the rate of Rs. 12 per Surat seer, being Rs. 550-0-10; double the value and double the duty, therefore, together amount to Rs. 836-8-8. The prisoner is then called in and directed to pay the fine of the said sum of Rs. 836-8-8, or in default thereof to undergo one year's imprisonment, subject to the confirmation of the Magistrate. (Regulation IV. of 1830, Section III.) The clothes in which the opium was concealed are ordered to be confiscated, and the informants to be paid one-third of the proceeds, viz. Rs. 35-5-4; and the opium not having obtained a price equal to the amount of duty leviable thereon, is ordered to be placed in charge of the treasurer, agreeably to Regulation XXI. of 1827, Section VI. Clause 5th, and Clause 6th, Section VII.

G. Inverarity, Magistrate.

Confirmation by the Magistrate.—Confirmed. Prisoner's defence cannot be admitted. The Magistrate concurs with the lower Court in refusing it belief. Under any circumstances the smell of such a large quantity of opium must have been sufficiently perceptible to the prisoner, and, even supposing his story true, it would not exempt him from the provisions of Section IV. of Regulation XXI. of 1827,—harbouring, keeping, or concealing, or permitting the same to be done, being all equally amenable.

The Deputy Magistrate has very properly, under Section VI. Clause 5th, of the same Regulation, awarded one-third of the proceeds to the informers, but he

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appears to have made some mistake in his calculation of this sum. The proceeds are shown to have been Rs. 143-3-11, of which one-third is Rs. 47-11-11, and not Rs. 35-5-4, as stated; the error should be rectified accordingly in paying the amount.

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BROACH.

Keeping and Concealing Smuggled Opium.

Resolution of the Sudder Foujdaree Adawlut.—There are no grounds whatever for interference; the petition must be rejected.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

1856 November 13.

POONA.

[Case No. 83 of the Calendar of the Poona Sessions Court for 1856. Committed by the First Assistant Magistrate, J. S. INVERARITY, on the 16th October 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 20th October 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, for confirmation.]

Prisoner.—Dhonde bin Kondajee, Koonbee, aged 22.

Murder.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, on the night of Wednesday, the 8th October 1856, (corresponding to Boodwar, Ashwin Shood 9th, Shuké 1778,) in the hamlet of Khamgaum, Talooka Havelee, Zillah Poona, struck with a reaping-hook on various parts of the body, inflicting seven wounds, his mother Doorgae kom Kondajee, aged about forty-five years, from the effects of which she died the next day.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder, and pleads guilty.

C. M. Harrison, Acting Session Judge.

It appears that, suspecting his mother Doorgae of having illicit intercourse with one Mahado Munoru, and finding she did not attend to his remonstrances, he determined by murdering her to eradicate the bad habit. He states, that on the night of the day and date specified in the indictment, he concealed himself in the verandah of his house, from whence he saw his mother leave the

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POONA.

Murder.

house of one Rama bin Mulhare at midnight, and proceed towards that of Mahado; that he shortly afterwards followed her with a reaping-hook, and, finding Mahado sitting without his cattle stable, asked him if he had room for him to sleep there; that he replied in the affirmative, and they both went in and lay down at the head of the stable; that he then heard a movement among the cattle, and suspecting his mother was effecting her escape, he got up, followed, and wounded her with the reaping-hook (which he admits having brought for the purpose) in seven places, and so severely that she died the next day.

The prisoner pleads guilty to the charge, and having confirmed his confession after hearing the evidence in the case (which, if admitted to be true, is otherwise sufficient for conviction) read over to him, a verdict of guilty is recorded against him. He now before the Court states that he was suffering from ague and under the influence of 'bhang' when he committed the murder, but he brings forward no evidence to establish these facts, and the circumstances attending the murder, as detailed by himself, lead to the conclusion that he must have been perfectly sensible and collected. Mahado states that his mother had illicit intercourse with him; but, however much the prisoner may have felt the disgrace thus brought upon him and his family by her misconduct, it in no way justified him in deliberately murdering her.

He is therefore convicted of murder; in having, on the night of Wednesday, the 8th October 1856, (corresponding to Boodwar, Ashwin Shood 9th, Shuké 1778,) in the hamlet of Khamgaum, Talooka Havelee, Zillah Poona, struck with a reaping-hook on various parts of the body, inflicting seven wounds, his mother Doorgae kom Kondajee, aged about forty-five years, from the effects of which she died the next day.

And after duly considering the nature of the offence

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1856 November 13. — POONA. — Murder.

committed, and the punishment provided for the same by Clause 4th, Section XXVI. Regulation XIV. of 1827, the following sentence is passed:—

That you, Dhonde bin Kondajee, Ravoot, be hanged by the neck until you be dead, at the usual place of execution at Poona. Subject to the confirmation of the Sudder Foujdaree Adawlut.

* * * * * * * *

It is brought to the Magistrate's notice that the deceased's deposition does not appear to have been taken in the prisoner's presence, as it should have been.

Resolution of the Sudder Foujdaree Adawlut.—Conviction and sentence confirmed.

1856 November 13. — SURAT. — Murder.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 35 of the Calendar of the Surat Sessions Court for 1856. Committed by the Acting Second Assistant Magistrate, J. MORIARTY, on the 16th October 1856. Tried by the Session Judge, H. HEBBERT, on the 21st October 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, for confirmation.]

Prisoner.—Murian, Wife of Fukera Daood, Mussulman, aged 40.

Charge.—Murder; in having, on Sumvut 1912, Ashwin Shood 13th, (corresponding with the 11th October 1856,) about midday, near the village of At, Purgunna Parchole, Zillah Surat, cast her illegitimate child, named Esak, aged about one year, into a 'kharee' or creek, and thereby purposely, and without justifiable cause, caused its death by drowning.

Prisoner pleads not guilty.

H. Hebbert, Session Judge.

Finding and Sentence by the Sessions Court.—The facts of this case are few and simple. The prisoner was the mother of an illegitimate child, about twelve months old. On the day recited in the charge this child was

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missed, and suspicion was excited that she had made away with it; she was therefore questioned, when she consented to point out where her child was to be found, and accordingly led the way to a kharee, about a quarter of a 'gão,' or rather more than the third of a mile from her house, and there, in the water, it was discovered dead.

The question is, how came the child's body where it was found? On this point no one can give information except the prisoner, and she states that, being suddenly attacked with fever, as she was passing the kharee, at this spot, the child slipped from off her hip, and thus was drowned. She denies having intentionally taken its life.

The Court, however, wholly disbelieves this statement, and considers that circumstances warrant the conviction that prisoner wilfully murdered her infant. In the first place, the spot where the body was found was some little distance higher up the kharee than the usual ford, and so muddy that persons never attempt to cross there. In the next place, the water was only knee-deep, or thereabouts; wherefore there could have been no risk or hindrance to the prisoner again picking up the child had it accidentally slipped from her side. And in the third place, had she been unable to save her child herself, her first impulse must have been to give the alarm, and call for help, whereas she did nothing of the kind. These three facts amount, the Court considers, to a refutation of the prisoner's statement, and to a violent presumption of her guilt, as charged. Especially the Court attaches great weight to the fact first mentioned, for, except of premeditation and design, it is utterly improbable the prisoner would have left the usual ford to attempt to cross the kharee at an almost impassable spot; and what her object in so doing could have been, except to obtain the requisite privacy in drowning her infant, the Court cannot conceive. At first the Court had thought the body might have been washed where it

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was found by the tide from some other spot; but then some search would have preceded its discovery, whereas it is distinctly deposed the prisoner took the Authorities direct to it, and this she could only have done from previous knowledge. Hence it follows she must have drowned it at that very place.

The prisoner has endeavoured to explain away the above suspicious facts by saying she totally lost her self-possession from the fever, and therefore left the usual ford, therefore did not attempt to save her child, and therefore did not give the alarm; but this plea the Court holds to be undeserving of notice. Had she lain down on the bank of the kharee and slept, or been found there as 'bebhan' as she describes herself to have become, the Court might have been influenced by it; but instead of that, she had sense and strength enough, as she admits, after her child fell into the water, to walk home. No more of either than she thus showed herself to possess was requisite to avert all that has happened.

Under this view the Court finds the prisoner guilty of murder, as charged; in having, on Sumvut 1912, Ashwin Shood 13th, (corresponding with the 11th October 1856,) about midday, near the village of At, Purgunna Parchole, Zillah Surat, cast her illegitimate child, named Esak, aged about one year, into a kharee or creek, and thereby purposely, and without justifiable cause, caused its death by drowning.

Looking, however, to the circumstances, the Court considers a secondary punishment will meet the case. In her extreme poverty, and the diseased state of the child's head, the prisoner may, in her ignorance, have deemed it a mercy to put it out of its misery. The Court, therefore, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut, passes the following sentence:—

That you, Murian, wife of Fukera Daood, be trans-

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ported beyond seas for the term of your natural life, under Regulation XIV. of 1827, Section XXVI. Clause 4th.

* * * * * * * *

The Acting Second Assistant Magistrate has committed the prisoner as a widow, instead of the wife of her second husband. The Court will draw his attention to this, that he may avoid a similar error in future.

Resolution of the Sudder Foujdaree Adawlut.—The Court cannot confirm the conviction in this case. The Session Judge is of opinion that the body being found at a spot where people never attempt to cross the kharee, a place where the water was only knee-deep, and that, if prisoner was unable to save the child herself, she would have given the alarm had she not intended to drown her child, amount to a refutation of her statement and violent presumption of her guilt; and holding her plea that it was in the delirium of fever that she left the usual ford, and therefore did not attempt to save the child or give the alarm, undeserving of notice, he finds her guilty of murder. Had it been proved that prisoner was not suffering at the time from fever, the conviction might have been upheld; but, though she told the Havildar, Wulubh, when he came to her in the afternoon after the loss of the child, that she was suffering from fever, he never touched her, or took any steps to ascertain whether that was the case or not; and the Session Judge refused to examine the witness Nunoomia, because he, amongst others, could throw no light on the subject, and yet this witness is stated to have deposed before the Assistant Magistrate that when ordered by the Joint Police Officer to take Murian to the Thanna, they went slowly, because she was ill of fever. The state of the child, moreover, as described, shows that it could scarcely have survived many days, and there was, therefore, no motive for taking its life.

The prisoner's statement might not (as the Session

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Judge did not take evidence to prove or refute the fact of her having fever) appear probable, but it still is possible, and the Court, therefore, do not think it is *safe* to convict her. But when the Court have reason, as in this case, to believe that the prisoner's story, not being refuted, is probably true, she *must* be acquitted and discharged.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

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[Case No. 104 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Deputy Magistrate, RAGHOBA JANARDHUN, on the 28th July 1856. Tried by the Session Judge, A. W. JONES, on the 17th, 18th, 19th, 20th, 22nd, 25th, and 27th September 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Murder, and Robbery.

Prisoner.—Anapa bin Seshgeer Naique, Brahmin, aged 34.

Charge.—Murder and robbery (Regulation XIV. Section XXVI. Clause 1st, and Section XXXVII. Clause 3rd, A. D. 1827); in having, on Tuesday, the 8th July 1856, (corresponding with Ashad Shood 6th, Shuké 1778,) within the limits of the village of Mundapoor, in the Gokak Talooka, in the Belgaum Division of the Dharwar Zillah, purposely, and without justifiable or extenuating cause, deprived of life one Ballapa bin Krishtapa Naique, aged about sixty years, by beating him on the head with a stone, or some such weapon, so that he, the said Ballapa, then and there died; and in having, at the same time and place, taken from the said Ballapa's person property valued at about Rs. 91-4-0.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—In this case the prisoner is charged with murder and robbery, and pleads not guilty.

It appears that the deceased Ballapa bin Krishtapa, a Shroff, left his village of Kudkole on Sunday, the 29th

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June last, to carry on his business at the bazar of Mundapoor as usual, and that he never returned. His son, the complainant, deposes that his father usually took with him about Rs. 50, but that on this occasion he did not know actually what money he had with him, and used generally to return from Mundapoor on the Wednesday, but that he sometimes went on from Mundapoor to Gokak for the bazar there, and stayed till the following Wednesday, which would be the 9th July. When, therefore, this day, and even the Friday after it, passed without his returning, he determined to go the next day and search for him; but on that day (Saturday) a man arrived from his relations in Gokak, and so he contented himself with writing to them by him, and went about his own affairs till Wednesday (16th July), when he heard from Gokak, from his uncle Seshgeer Naique (the prisoner's father), that his father had been at Gokak, but that he had left again for the Mundapoor bazar on a Sunday; and he therefore started at once to Sutteegherry, but hearing nothing of him there, went on to Mundapoor, where he was told his father had been, but had left the week before, on a Friday morning. He therefore at once complained to the Police Patel, who went out and began to search the road to Sutteegherry, which is the next town to Mundapoor, on the road from Gokak to Kudkole. Nothing, however, was discovered that day, as it was already late and dark. On the next day, Thursday (17th July), the search was renewed, and on a wooded hill, about a quarter of a koss from the town, and on the left of the road leading to Sutteegherry, there were found some bones and clothes, and some small square boxes or baskets, which, with the clothes, the complainant recognised as his father's. The Police Patel, therefore, put a guard at the place, and reported the matter, and the inquiry was entered into and continued from that evening till the Monday following. The Inquest report,

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proved before the Court, shows, that in the opinion of the members, from the bones having been found in a place where stones had been picked up and leaves and branches of trees pulled off, which were lying as if they had been heaped together for the purpose of concealing a corpse, and from the deceased being a shroff, and, therefore, always carrying money with him, these were the bones of a man who had been murdered, and that they were those of the deceased. It is admitted by the prisoner, in the statement he made before the Deputy Magistrate and confirmed before the Court, that he left Gokak on Sunday, the 5th July, and reached Mundapoor at 5 P. M.; that he lived while there at the house of Gopal Bhut; that the next day (Monday) he was at the bazar with his uncle the deceased, where they sat side by side; and that next morning at 8¼ A. M. he was going to Kudkole, when, at a quarter of a koss from Mundapoor, he met Ballapa and Annacharee, and hearing from them that one Gopal Naique was not at Kudkole, he turned back after going a little way, and joined them and returned with them through Mundapoor and Ooparkutty to Gokak. Now it is shown by witness Ambabaee, in whose house the deceased ate his meals at Mundapoor, that she saw him pass her house before sunrise on the Tuesday morning; and by Gopal Bhut, the person with whom the prisoner lodged in Mundapoor, that he saw his (the prisoner's) horse ready saddled a short time after sunrise on the Tuesday morning; and a Shetsundee and the Police Patel depose that they saw the prisoner go out of the Gokak gate a short time after sunrise on this morning, having also seen the deceased pass out some little time before sunrise by the same gate. It is then shown by witness Fukeera, who was going out with some vegetables for sale at another village on this same morning, that about a quarter of a koss on the road to Sutteegherry he saw the deceased overtaken by the pri-

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soner and another man, and that they stopped; and he deposes that soon after he heard cries, about which there is a slight difference in his statements before the Court and the Assistant Magistrate.

The witness No. 17, a woodcutter, deposes that on this morning he was tying up the wood he had cut in the jungle by the side of the road to Sutteegherry, when he saw on this road the prisoner and another man just behind the deceased, and behind them again a man with a load, and that he then turned homewards with his wood, and a few minutes after he heard a voice crying out, "Annya, don't strike."

It is then shown by witnesses Nos. 18 and 19 that on the next day (Wednesday), at different times of the day, they saw the feet of a corpse in this jungle, by the side of the Sutteegherry road, which was covered over with leaves and stones; and one says he was too frightened to speak about it, and the other says he was afraid of being called as a witness, and so he did not mention it till he was questioned at the time the Police Amuldar came to the village.

The Session Judge considers there is no reason whatever to doubt the truth of the statements of the four witnesses, from whose depositions it appears that the deceased and the prisoner left Mundapoor by the Gokak gate about sunrise on the Tuesday morning one after the other. The prisoner, in his statement before the Deputy Magistrate denying his confession, does not allude to this; he only says, "on his way to Kudkole, at 8½, he met," &c. &c. Now, if he had not started from Mundapoor until about half-past eight, which is about three hours later than the time spoken of by these witnesses, he ought to have been able to get some evidence to prove it, instead of which the evidence of these persons is altogether unanswered. As to the evidence of the four witnesses who speak to seeing the prisoner come

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up with the deceased on the road to Sutteegherry, and to hearing cries soon after, and to those who speak to having seen the body the next day, at first sight it seems against it that it was not mentioned till ten or eleven days afterwards; on the other hand, there was no reason why the two first witnesses should have spoken of what they had seen before they had heard of the death of Ballapa, and this they could not have heard of before the evening of the 16th (eight days afterwards), as it was not even suspected at Mundapoor until then; and, as it is very seldom that evidence is volunteered in this country by persons who are not interested in a case, it is sufficient, therefore, as regards their evidence, that it was given as soon as it was required, that is, on the 19th, the first day the Police Amuldar began his inquiry regularly. The Session Judge therefore considers their evidence may be believed, as well as that of the two persons who saw the dead body, as the reason they give for their silence is quite natural.

It is then shown by witnesses Ballapa and Annacharee that they met the prisoner on the Sutteegherry road about one koss from Mundapoor at about 9 o'clock, and that, after passing them, he turned back and joined them, and returned with them to Gokak. The evidence thus far shows that the prisoner left Mundapoor soon after the deceased, or about six; that he joined him on the road about a quarter of a koss from Mundapoor, near a small hill; that some cries were soon after heard; that at about nine he was met alone on the same road, three quarters of a koss further on, and the interval between the time of leaving Mundapoor, with the widest allowance for Native misreckoning of time, gives ample space for the murder and the concealment of the body, as described in the confession; that the next day a dead body was seen covered with leaves in this jungle, by the side of the road, near where the pri-

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soner and deceased were last seen together. Now, the evidence to show that these bones were those of the deceased Ballapa consists of that of his own son and nephew, who identify the clothes and remnants of clothes, a shoe, and two small square baskets (or boxes made of matting) found at this hill; and these articles of dress are also identified by the brother of deceased (the father of the prisoner), in whose house the deceased had stayed at Gokak just before going to Mundapoor; and it is also shown, by the complainant and the Police Patel and witness No. 20, that two pieces of paper were found on the Sunday near where the bones had been discovered, and they are shown by the complainant to be in the handwriting of the deceased, so that the Session Judge considers there is no doubt these bones were those of the deceased Ballapa. Finally, it is proved that the prisoner confessed before the Police Amuldar to having murdered his uncle at the spot described by the witness as that where the bones were found, and though the prisoner may be allowed the benefit of the doubt as to whether he admitted this confession before the Police Superintendent, the Session Judge can see no reason to doubt that he gave it voluntarily to the Police Amuldar. It is shown, also, that the prisoner showed the place where the murder was committed, and picked up there the two pieces of written paper identified by the complainant as being in his father's handwriting. There is nothing to prove that any of the money found with the prisoner was part of that robbed from the deceased, nor can the payment of Rs. 50 to Ramchunder Naique, on the 17th July, be considered to prove anything, since that person also deposes he had borrowed that sum of him on the 3rd of the same month, and the prisoner must be allowed the benefit of the suggestion of the Vakeel, that this was only the return of the same sum borrowed. But, considering the corroboration which this confession otherwise receives

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from the evidence in the case, the Session Judge is of opinion that it may be used against the prisoner, who is therefore convicted of murder and robbery; in having, on Tuesday, the 8th July 1856, (corresponding with Ashad Shood 6th, Shuké 1778,) within the limits of the village of Mundapoor, Talooka Gokak, in the Belgaum Division of the Dharwar Zillah, purposely, and without justifiable or extenuating cause, deprived of life one Ballapa bin Krishtapa, aged about sixty years, by beating him on the head with a stone, or some such weapon, so that he, the said Ballapa, then and there died; and in having at the same time and place taken from the said Ballapa's person property valued at about Rs. 66-10-6. And after duly considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, the following sentence is passed :—

That you, Anapa bin Seshgeer Naique, be taken to the common place of execution in Dharwar, and there be hanged by the neck till you are dead. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—Mr. Jones has taken great pains with this case, but I cannot concur with him in his finding.

The only evidence that there is against the prisoner, besides his retracted confession, is that the corpse (giving every credit to Hunmunta and Kulsia) of deceased Ballapa was seen by them on Wednesday, in a place near where Fukeera and Ballapa (witness No. 17) had the day before seen the prisoner in the company of deceased, and heard a cry, from which it might be concluded that Anapa was assaulting some one, Ballapa Naique (witness No. 9) and Siddo meeting him, and being afterwards joined by him, near that same spot. No motive can be assigned for the murder. Robbery is assigned in the charge, but that the Session Judge, I think very properly,

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discredits; enmity is suggested, but I cannot see any grounds for suspecting that motive.

It appears that Ranba was sent by the First Karkoon on Thursday evening, the day the bones were found, to apprehend prisoner Anapa, his father, and the witnesses Ballapa and Annacharee, which shows that suspicion very early attached itself to him, and that might have been from the Police Patel's saying that he had seen both prisoner and deceased leave Mundapoor, though it is not probable, as they did not leave together. The Karkoon Luxumon, however, says that complainant Ragapa said, on Thursday, that he suspected prisoner on account of an old family quarrel, while Ragapa himself declares that he did not suspect him until he heard that he had been seen by Ballapa and Annacharee, but that, we have seen, could only have been after he was apprehended. I therefore cannot see how suspicion first attached itself to prisoner. On Friday prisoner was in custody in the Chowree, and denied the charge. Ballapa and Annacharee were examined that evening. On Saturday the District Police Officer went to the hill where the bones were found, came back at 8 P. M., and prisoner confessed. His confession was taken down next day, and then he showed them the scene of the murder; but I cannot find that he showed them anything that an intelligent Police Officer would not have seen himself, for the story about the money is unintelligible. If the prisoner took it home, as he says he did, the two rupees could not have been found hidden; if he hid them, as at one time he said he did, what is become of all besides these two rupees? The Rs. 50 paid to Ramchunder Naique was nine days after the murder was committed, and the Session Judge very properly ignores the idea that this was part of that stolen from the deceased. I must then lay out of consideration this confession, for it appears doubtful whether it was corroborated before the Superintendent of Police, and it

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is very certain it was retracted before the Deputy Magistrate, and, there remaining nothing but grounds for suspicion against the prisoner, he must be acquitted and discharged.

Minute by Mr. Harrison.—In this case it would have been more satisfactory had the remains been examined by a competent medical officer, and his testimony given in respect to them; but I do not see reason to disagree with the Session Judge in his opinion that the bones found were those of the missing Ballapa Naique, for there is sufficient evidence to rely upon as to that fact.

I do not, however, concur with the Session Judge that the confession of the prisoner to the Police receives sufficient corroboration, in circumstances established in evidence, to justify the verdict of guilty.

The witnesses to the existence of the corpse, and to the relative positions of the prisoner and the deceased on the day on which the latter must have been murdered, seem to deserve credit, but their testimony is not sufficient for conviction, and although circumstances cause strong suspicion to rest upon the prisoner, proof is wanting that he committed the murder, and he must be acquitted.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is acquitted, and to be discharged.

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KAIRA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Reference from the Session Judge of Ahmedabad, A. B. WARDEN, to the Sudder Foujdaree Adawlut, dated 6th November 1856, in the case of Roopla Khoora, a Convict in the Kaira Jail.]

Precautionary Measures.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to report, for the information of the Judges, that Mr. Walter, the Senior Assistant Session Judge of Kaira, has brought to my notice that a prisoner, named Roopla Khoora, in the Kaira Jail, has been convicted by the Hoozoor Deputy Magistrate of Kaira of robbery, without force, and sentenced to three months' imprisonment, with hard labour, on the expiration thereof to pay a fine of Rs. 50, or else be imprisoned for a further period of three months, and afterwards to furnish security to the amount of Rs. 50 for his future good conduct for two years, in default thereof to be imprisoned for that period. This sentence has been confirmed by the Magistrate, who has made an endorsement on the warrant to the effect that, after the expiration of the punishment to which the prisoner has been sentenced, and in default of his not furnishing security, his inability to do so is, in the eleventh month of his imprisonment in default of security, to be brought to the notice of the Magistrate, who will make a report on the subject to the Judges of the Sudder Foujdaree Adawlut.

According to the above endorsement, the prisoner not being able to pay the fine, and not being able to furnish security, will be imprisoned for seventeen months. As the Magistrate is only authorised to imprison for one year, I am of opinion that if the prisoner is kept in confinement by the orders of the Magistrate for seventeen months it will be illegal, and I beg to be favoured with instructions on the subject.

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Precautionary Measures.

The warrant and original Guzerathee correspondence are herewith enclosed.

Resolution of the Sudder Foujdaree Adawlut.—The Court do not think that the Magistrate ought to pass such an order as this. He ought to confirm the sentence of imprisonment, and request that the prisoner may be returned to him at its expiration, in order to precautionary measures being adopted.

The Court annul the order for imprisonment above six months.

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POONA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 68 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, W. M. COGHLAN, on the 20th August 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 9th, 10th, 11th, and 12th September 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, for confirmation.]

Wilful Murder.

Prisoners.—No. 1, Ahiloo wulud Aukoosa, Ramosee, aged 25.
2, Bhiwa wulud Naikoo, Ramosee, aged 30.
3, Siwa wulud Naikoo, Ramosee, aged 27.

Charge.—Wilful murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in that, on Saturday, the 22nd day of March 1856, (corresponding to Shunwar, Falgoon Wud 1st, Shuké 1777,) at or near the village of Sasoor, Talooka Poorundhur, Zillah Poona, you being assembled for an unlawful purpose, did cause the death of Sukharam bin Wito, aged twenty-five years, who was struck on the head and other parts of his body by one of you with a sword, so that he did die from the effects of the assault on the 27th day of July 1856, at the Civil Hospital at Poona.

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Wilful Murder.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners are charged with murder, and plead not guilty.

On the night of 22nd March last, the deceased Sukharam, his father Witojee, and his brother Babajee, with a guest Aniaba, were sleeping in their 'kulla,' or grain-yard, within the limits of Sasoor, when, being woke up by the barking of a dog, they (the night being moonlight) saw four men, two of whom were robbing the 'bajree,' and the other two standing by. Babajee appears to have advanced first, and he was met by a stone, which struck him on the chest and knocked him down. Sukharam then, followed by his father, went after the robbers, who were retreating, and succeeded in capturing one of them (Ahiloo, prisoner No. 1), but he was immediately assaulted by the others with a stick and a sword in its sheath, and his father being in the mean time kept off by a volley of stones, he was, before further assistance came up, so badly wounded on the head with the sword (the sheath of which was broken into three pieces), that notwithstanding the care he received in the Civil Hospital, his brain became affected, and he died on the 27th July following.

The deceased was wounded altogether in four places, viz. on the head, the back of the neck, the right thigh, and left arm; but it was the wound on the head which caused his death, as is shown by the Inquest Report, and evidence of the Civil Surgeon, Dr. Keith.*

* *Letter from the Civil Surgeon to the Assistant Magistrate.*—In answer to your letter of the 5th instant, inquiring as to the cause of death of Sukharam bin Wito Deshmook, who lately died in the Civil Hospital, I have to reply as follows:—

The man referred to was first admitted into the Civil Hospital on the 25th March last, for four large wounds, on the thigh, the left arm, the neck, and on the left parietal bone of the head. This last was complicated with fracture of the corresponding portion of the skull. After two months' residence in hospital, he was discharged at his own request, the wounds, with the exception of that on the scalp, having healed up.

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The deceased, whose deposition was taken by the Police Amuldar, on solemn affirmation, in the presence of the prisoners, the next day, states that Ahiloo (prisoner No. 1) was the man he caught, and that he was assaulted by the other two prisoners, Bhiwa and Siwa (Nos. 2 and 3), with a stick and sword, as above described; and he further states it was on his telling them he knew them that they thus assaulted him, throwing dust in his eyes. And his statement to this effect is confirmed by that of his father, who also positively affirms that he recognised all three of the prisoners; and of his brother Babajee, who deposes to having identified two of them, prisoners Nos. 2 and 3 (Bhiwa wulud Naikoo and Siwa wulud Naikoo). [The latter before the Court named prisoner

He was discharged on the 20th May, and re-admitted on the 2nd June, from symptoms of lock-jaw. From these he recovered, but he was soon seized with paralysis of the left side, and the wound in the head did not heal up. He gradually sank, and died in a comatose state, with symptoms of a diseased brain, on the 27th July.

A *post-mortem* examination was held immediately after death. The scalp on the left side was much enlarged and thickened; the fracture of the parietal bone was seen to be two and a half inches in length; the two ends of it had healed up, but the middle space was open to about a quarter of an inch broad, through which a cerebral hernia protruded. On opening the head, extensive marks of inflammation of the membranes of the brain were seen, and in the cerebrum itself a large abscess was found, full of dark yellow pus, measuring about three ounces.

I have, therefore, no hesitation in certifying that, in this case, death was caused by the consequences arising from the infliction of the wound on the head.

Deposition of the Civil Surgeon.—The letter now shown to me contains a statement of the case of Sukharam bin Wito, who was in the Civil Hospital under my charge from the 25th March to the 20th May, and again from the 2nd June to the 27th of July 1856, on which day he died. I have no hesitation in stating that his death was caused by the effect on the brain of a wound on the left side of the head, from which he was suffering when he was first admitted into Hospital. The wound on the head was in the same state when he was re-admitted into Hospital on the 2nd June as when he left on the 20th of May, and it did not appear to have been meddled with in any way.

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No 1 (Ahiloo) also, but he did not mention his name in his former deposition.]

It appears also, that before the prisoners were shown to the deceased, others were produced, and he at once said they were not the men; and it being moonlight at the time, and the prisoners being residents of their village, and they constantly in the habit of seeing them, there is no reason to suppose that he, his father, and brother, could be mistaken in their identification.

But, otherwise, the footmarks of the four robbers were at once traced by the Sasoor watchman and his help (witnesses Nos. 10 and 11) from the kulla, or grain-yard, to where the assault was committed, and from thence from the limits of Pampul into the Kuludgaum boundary, where they turned and came back to the high road near Sasoor, and there they were lost. They were, however, measured, and it was remarked that one man had on shoes which had been mended by being patched in the centre of the sole, and of the others, that one of them had unusually large great-toes; and it was found that the shoes of Siwa (prisoner No. 3) are patched as above described, that Bhiwa (prisoner No. 2) has unusually large great-toes, and that one of the measures corresponded with the foot of the prisoner. (Through the neglect of the Police Amuldar, neither the shoes nor the measures have been forwarded.) The watchmen also found a piece of the broken sheath of a sword at the place where the assault took place, and, in the mean time, two other pieces having been discovered by the Police, they were, on being put together, found to constitute the whole, and both of the Rukwaldars, Gungaram and Hunmunta (witnesses Nos. 10 and 11), identify it as belonging to the sword of the prisoner No. 1 (Ahiloo).

The prisoners called two witnesses to prove an *alibi*, of whom one states that he saw them at the Chowdee at Ambode at 3 o'clock on the night of the 22nd March last,

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and the other that he saw them at 10 o'clock the same night, and again the following morning, when they were apprehended, but not in the mean time; and as it is not more than a koss and a half from Ambode to where the assault was committed, and as it was perpetrated at midnight, it is obvious that they have failed in establishing it.

Under these circumstances, entertaining no doubt of their guilt, they are convicted of murder; in having, on Saturday, the 22nd day of March 1856, (corresponding to Shunwar, Falgoon Wud 1st, Shuké 1777), at or near the village of Sasoor, Talooka Poorundhur, Zillah Poona, they being assembled for an unlawful purpose, caused the death of Sukharam bin Wito, aged twenty-five years, who was struck on the head and other parts of his body by one of them with a sword, so that he died from the effects of the assault on the 27th day of July 1856, at the Civil Hospital at Poona.

And under the provisions of Clause 4th, Section XXVI. Regulation XIV. of 1827, the following sentence is passed, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut:—

That you, Ahiloo wulud Aukoosa, Bhiwa wulud Naikoo, and Siwa wulud Naikoo, be each of you transported beyond seas for the term of your natural lives.

* * * * * * * *

This is the second case in which the Police Amuldar of Poorundhur has been guilty in its preparation of culpable neglect of duty. Not only did he omit to forward the prisoner Siwa's shoes and the measures of the footmarks with the case, but it appears, from the Assistant Magistrate's proceedings, that when they were called for he attempted to palm off another pair in their place, and that they could not subsequently be found. It does not also appear whether any measures were taken to discover the sword.

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POONA.

Wilful Murder.

W. H. Harrison,
Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—I do not think that it is satisfactorily established in this case that the prisoners were recognised by the witnesses who now swear to them. It is important to ascertain in such cases whether they at once denounced the offenders. But if they are held to be identified, still the deceased was struck while trying to seize the prisoners, not with the sword drawn, but sheathed, not by Ahiloo (prisoner No. 1), whom he tried to seize, but by others apparently.

I do not think it is proved, without doubt, that the deceased died from the effects of the wounds he received; for, although that is the opinion of the Civil Surgeon, it does not appear that he found it from a *post-mortem* examination, while the Inquest Report sets forth the wound as healed; and the death took place four months after the assault, the patient having in the mean time been discharged from the Hospital. Under all the circumstances I would acquit the prisoners.

R. Keays, Acting
Puisne Judge.

Minute by Mr. Keays.—I concur generally with Mr. Harrison. I do not consider that the prisoners were identified; and I do not think it certain that the deceased died from the effects of the wound on the head, which is represented by some of the villagers to have healed. If he had not recovered from the effects of the wound, the Civil Surgeon should not have allowed him to leave the Civil Hospital on 20th May. I think the prisoners should be acquitted and discharged.

Resolution of the Sudder Foujdaree Adawlut.—The prisoners are acquitted, and to be discharged.

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Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

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Poona.

[Case No. 46 of the Calendar of the Poona Sessions Court for 1856. Committed by the Deputy Magistrate, Nana Morojee, on the 24th June 1856. Tried by the Acting Assistant Session Judge, C. G. Kemball, on the 25th, 26th, 27th, 28th, and 30th June, and 1st, 2nd, 7th, 15th, and 16th July 1856. Reviewed by the Acting Session Judge, C. M. Harrison, on the 7th August 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoners Anajee Govind, Ramchunder Dajee, and Ramchunder Gungadhur.]

Breach of Trust, and Aiding and Abetting in the Commission of the above Crime.

Prisoners.—Nos. 1, Anajee Govind, Brahmin, aged 27.
2, Ramchunder Dajee, Brahmin, aged 30.
3, Munohur Gopal, Brahmin, aged 27.
4, Ramchunder Gungadhur, Brahmin, aged 26.
5, Ramchunder Girmajee, Brahmin, aged 35.

Charge.—Against prisoners Nos. 1 and 2 (Anajee Govind and Ramchunder Dajee), breach of trust (Act XIII. of 1850, Sections I. and XVII.); in that, date unknown, between the 1st April and the 30th September 1855, at different places, between Poona and Patus, in the Poona Zillah, while in the service of the East India Company, being employed in the respective capacities of overseer and Karkoon on the establishment of the Executive Engineer, Poona Collectorate, and being, by reason of such employment, entrusted with the control of certain monies in connection with the construction of certain bridges on the road leading from Poona to Sholapore, they did embezzle and fraudulently dispose of sums from the abovementioned monies, amounting in the aggregate to Rs. 1,150-12-6; and further, that between the abovementioned dates, and in their respective capa-

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Breach of Trust, and Aiding and Abetting in the Commission of the above Crime.

cities, they did, with felonious intent, knowingly frame or cause to be framed, and also verify with their signatures, false statements of sums expended in connection with the construction of three bridges over the Kasoordee (No. 8), Yéwut (No. 10), and Bhaudgaum (No. 13) nullas, containing over-charges for material and labour amounting in the aggregate to Rs. 563-13-0.

The items are thus shown with regard to the first portion of the charge:—

Bridge No. 6, Ambay Nulla ....Rs.		263	5	3
„ No. 7, Khedkur do.		292	8	4
„ No. 8, Kasoordee do.		594	14	11
	Rs.	1,150	12	6

With regard to the second portion of the charge:—

Bridge No. 8, Kasoordee Nulla......Rs.		317	11	6
„ No. 10, Yéwut do.......		132	6	4
„ No. 13, Bhaudgaum do.......		113	11	2
	Rs.	563	13	0

Prisoners Nos. 3, 4, and 5 (Munohur Gopal, Ramchunder Gungadhur, and Ramchunder Girmajee), under Regulation XIV. of 1827, Section I. Clause 5th, in connection with Act XIII. of 1850, Sections I. and XVII., with aiding and abetting in the commission of the above crime; in that, knowingly and with fraudulent intention, between the abovementioned time and place, Munohur Gopal, being entrusted with the examination of the aforesaid statements and muster rolls, and of paying the amount entered, did disburse certain sums overcharged; Ramchunder Gungadhur, having no connection with the above works, did represent himself as a contractor, falsely stating certain monies to be due to him; Ramchunder Girmajee did attest two false receipts, one for Rs. 2,051-12-6, and the other for Rs. 1,198-12-5, both dated 10th July 1855, purporting to have been passed

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C. G. Kemball, Acting Assistant Session Judge.

by contractors and others in connection with the above works; thus aiding the schemes of embezzlement set forth in the first charge.

To the first charge, prisoners Nos. 1 and 2 (Anajee Govind and Ramchunder Dajee) plead not guilty.

To the second charge, prisoners Nos. 3, 4, and 5 (Munohur Gopal, Ramchunder Gungadhur, and Ramchunder Girmajee) plead not guilty.

Finding and Sentence by the Sessions Court.—The prisoners are brought up and placed at the bar, charged, prisoners Nos. 1 and 2 (Anajee Govind and Ramchunder Dajee) with breach of trust, and prisoners Nos. 3, 4, and 5, with aiding and abetting in the above. It appears from the evidence before the Court, that, some time back, one Dajee Jeshwunt, the Koolkurnee of Yéwut, made a petition (Exhibit No. 40) to Lieutenant Gilmore, the then Acting Executive Engineer, regarding certain frauds, the subject of the present charges, against the prisoners; inquiry was immediately instituted, and frauds in no less than six works on the Sholapore road between Poona and Patus were considered clearly proven, and the prisoners were forwarded to the Magisterial Authorities.

Prisoner No. 1 (Anajee Govind) was the overseer employed on the above work; it was his duty to examine the works as they progressed, and to furnish monthly figured statements of the amount of work done, the estimated value, and the persons employed.

Prisoner No. 2 (Ramchunder Dajee) was the District Karkoon employed at the works; it was his duty daily to inspect the works, and also daily to enter the amount of work done, &c.; also to frame the monthly figured statements for the overseer to forward.

Prisoner No. 3 (Munohur Gopal) was the Hoozoor Karkoon, whose duty it was to first test the accuracy of the balances in the figured statements, and, if correct, to receive the amount entered from the Executive Engineer;

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Breach of Trust, and Aiding and Abetting in the Commission of the above Crime.

he had then to proceed into the districts, and, having ascertained the reality of the different demands, to pay out the sums entered.

Prisoner No. 4 (Ramchunder Gungadhur) was entered as contractor for the performance of certain of the above works.

Prisoner No. 5 (Ramchunder Girmajee) was Karkoon on a bridge (No. 3). His signature is however found in attestation of certain documents connected with the present case.

Now to take the different bridges in the order related by the witness Chinto Narayen (Exhibit No. 4), showing the connection of the different prisoners with each:—

The Kasoordee, or No. 8 Bridge.

From the figured statements (Exhibit No. 5) it appeared that "earth filling" had been performed to the extent of 446,617 cubic feet, at a sum of Rs. 1,253-4-8, and "moorum filling" to the extent of 29,325 cubic feet, at a sum of Rs. 256-9-6.

In the chunam accounts, 41 khundees and 5½ maunds were entered as having been purchased from two persons, Apa and Huree, at Rs. 371-7-7. Further, two items of rough stone, 500 feet at Rs. 7-8-0, and sand 12 khundees at Rs. 6, as purchased from the same persons.

The six monthly figured statements (Exhibit No. 5) are for April, May, June, July, August, and September 1855, and the *four* chunam, rubble, and sand accounts (Exhibit No. 5) for the same months. To these are attached the signatures of prisoner Anajee Govind as overseer; prisoner No. 2 (Ramchunder Dajee), District Karkoon; and prisoner No. 3 (Munohur Gopal), Hoozoor Karkoon, attesting their correctness. Ramchunder Gungadhur (prisoner No. 4) is entered as the contractor.

The Yéwut, or No. 10 Bridge.

In the figured statements (Exhibit No. 7) 4,080 cubic feet of excavation for pavement at Rs. 61-3-2, also 3,090

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cubic feet of pavement work at Rs. 319-15-5, making up a sum of Rs. 381-2-7, were entered. The names of certain cartmen (missing) were also entered. To these figured statements and muster rolls the attesting signatures of prisoners Nos. 1, 2, and 3 (Anajee Govind, Ramchunder Dajee, and Munohur Gopal), are attached.

The Bhaudgaum, or No. 13 Bridge.

Exactly the same amount of work is entered as in Bridge No. 10, and the same signatures are attached.

The Ambay, or No. 6 Bridge.

In the figured statements (Exhibit No. 8) an item of Rs. 263-5-3 is entered as having been paid to prisoner No. 4 (Ramchunder Gungadhur), contractor, on account of "moorum filling" and protective mounds.

To the above statements, which are for May and July 1855, is attached the signature of prisoner No. 1 (Anajee Govind). In the two contract papers, also for May and July (Exhibit No. 8), the name of prisouer No. 4 (Ramchunder Gungadhur) is entered, attested by prisoner Anajee Govind. To the receipt statements (Exhibit No. 11) the name of prisoner No. 4 is attached.

The Khedkur, or No. 7 Bridge.

In the figured statements (Exhibit No. 12) an item of Rs. 292-8-4 is entered as paid to prisoner No. 4 (Ramchunder Gungadhur), contractor. These statements, also the contract paper (Exhibit No. 12) in the name of prisoner No. 4, are attested by Anajee Govind (prisoner No. 1).

The evidence against the prisoners consists of,—1*st*, the figured statements and accompanying papers; 2*nd*, the depositions of two Surveyors, Venaek Bhikajee (Exhibit No. 20), and Mr. Sub-Conductor McNally (Exhibit No. 21); and 3*rd*, the depositions of different contractors and workmen on the line. The figured statements have been shown above: the Court has now to consider the remaining evidence.

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With reference to No. 8 Bridge.—As seen above, 446,617 cubic feet of "earth filling" at Rs. 1,253-4-8, and 29,325 cubic feet of "moorum filling" at Rs. 256-9-6, were entered in the statements. The work was surveyed by Venaek Bhikajee (Exhibit No. 20) and Mr. Sub-Conductor McNally (Exhibit No. 21); the former made the "earth filling" to amount to 204,084 cubic feet, estimated at Rs. 573-15-9, and "moorum filling" at Rs. 199-3-9, showing a difference of Rs. 806-10-8. Mr. McNally made the "earth filling" to be 200,740. They both speak to having carefully measured the work. In the statements for articles supplied, 41 khundees and some maunds are entered as having been taken from two persons (Huree and Apa) at Rs. 371-7-7, but Huree (Exhibit No. 25) and Apa (Exhibit No. 26) assert that they only supplied 31 khundees at Rs. 9 per khundee, making Rs. 279; thus a difference of Rs. 92-7-7. Yemajee Naik (Exhibit No. 33), whose duty *it* was, together with Ramchunder Dajee (prisoner No. 2), to examine all articles received, states that he only received 31 khundees from these persons. Some rough stone and sand are also entered as having been received from Apa and Huree, but they deny having furnished any. Lastly, the name of Ramchunder Gungadhur (prisoner No. 4) is entered as contractor, and his 'kubooliyut' (Exhibit No. 15) is shown, dated 23rd February 1855; but Gondapa (Exhibit No. 31) distinctly states that he took the contract and performed the work by himself; the contract was taken from the prisoner No. 1 (Anajee Govind) direct. This is corroborated by Yemajee Naik (Exhibit No. 33).

With reference to Bridge No. 10.—3,090 cubic feet of pavement are entered at Rs. 319-15-5. This was measured by Venaek Bhikajee (Exhibit No. 20), and made to be 1,595 cubic feet; also by Mr. McNally (Exhibit No. 21), and made 1,522½ feet.

With reference to Bridge No. 13.—The same measure-

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ment was entered as in the last work. It was measured by Venaek Bhikajee, and made 1,160 feet, and by Mr. McNally, and made the same, viz. 1,160 feet. Certain cartmen's names were entered for both these bridges. The Karkoon, Luximon Vitul (Exhibit No. 24), could find no such persons.

With reference to Bridge No. 6.—In this Ramchunder Gungadhur (prisoner No. 4) was entered as contractor, and received payment of Rs. 263-5-3 (*vide* his receipt, Exhibit No. 10); but this work is said to have been done before by Deepa and Apa (*vide* their kubooliyuts, Exhibit No. 9, and the report of Anajee Govind, prisoner No. 1, dated February 1855). Apa (Exhibit No. 38) states also that he performed the contract.

With reference to Bridge No. 7.—A sum of Rs. 292-8-4 is entered in the name of contractor Ramchunder Gungadhur (prisoner No. 4), but this work is shown to have been done before by Mulharee and Nago, contractors (*vide* their kubooliyuts for May and December 1854, Exhibit No. 13, and the Completion Register, Exhibit No. 14, signed by Anajee Govind, prisoner No. 1). Nago and Mulharee have not appeared in Court.

The prisoners, in their written defence, state to the following effect:—" That the witnesses have been tampered with; those who gave evidence against them received money, and those who did not were dismissed from service; that Govinda (Exhibit No. 39), the partner of Goondapa, states that he took the sub-contract from Ramchunder Gungadhur (prisoner No. 4); that Damodhurdas (Exhibit No. 32) denies all knowledge of Goondapa; that Ramchunder Gungadhur (prisoner No. 4) did really take contracts. Touching the earth-fillings, there was an enormous pit to be filled in, about which the surveyors say nothing; the original measurement, &c. given in the statements are correct; forty-one khundees of chunam were taken from Apa and Huree, who have

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deposed falsely, as their (prisoners') witnesses testify; the Lonarees did give "rough stone" too. The excavations in Bridges Nos. 10 and 13 were done by Gopala, the servant of Pando (Exhibit No. 28); the Gopala (Exhibit No. 27) in Court is not the same. The cartmen's names were properly entered; some carts must have been used. Beneath the pavement there was a large hole filled in with rough stone; the surveyors could know nothing of this."

The prisoners brought their witnesses before the Court to prove that the witnesses had been tampered with by Chinto Narayen (Exhibit No. 4); that Ramchunder Gungadhur (prisoner No. 4) was a *boná fide* contractor; that more chunam was furnished by Apa and Huree; that there was a large hole to be filled up, and that a number of cartmen were employed.

It appears necessary to take first the case of prisoner No. 4 (Ramchunder Gungadhur), as the positions of the other prisoners will be very materially affected by the establishment of his guilt or innocence.

According to the "statements," prisoner No. 4 is shown to have taken contracts for three bridges, Nos. 8, 6, and 7; but these works are proved to have been performed before by different contractors, about whose existence there appears to be no dispute,—indeed the prisoner himself allows that they had the contracts. The prisoner's line of defence is somewhat startling—that the work was actually performed in part by the contractors in 1854, but that, further work being necessary, he (prisoner) took the contract as shown in the "statements," and sublet them to the above contractor. But this story is not only contrary to fact (*vide* the Completion Register, and reports furnished by Anajee Govind, prisoner No. 1), but highly improbable, being denied *in toto* by the said contractors, with the exception of one Govinda (Exhibit No. 39), who states that he took the sub-contract from the prisoner, and also received payment from him;

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but from this testimony being entirely contrary to that of his partner Goondapa (Exhibit No. 31) and others, and also from his having, under circumstances of suspicion, run off to Bombay, his evidence is not entitled to much weight. That the prisoner No. 4 was a *bonâ fide* contractor is a supposition opposed alike to evidence and reason. Had he not been a mere man of straw he could have experienced no difficulty in proving his position. True it is that he does produce oral testimony, but in the face of such documentary and other evidence it is, in a country like this, utterly valueless. The statement of his witness and partner (Exhibit No. 56) is transparent in its falsity. Further, the prisoner's profession of a 'bhikshooke' (a mendicant Brahmin) suggests the improbability of his entering into any such contract.

The Court has not the slightest doubt that he was, and allowed himself to be set up falsely and with intent to defraud Government. Proofs of his having falsely assumed the above character, and further, of his having under such assumption received Government money, are sufficient to convict him of the charge against him. He accordingly stands convicted of aiding and abetting in defrauding Government.

In addition to the above, the prisoners Nos. 1 and 2 (Anajee Govind and Ramchunder Dajee) are stated to have been connected with the furnishing of certain overcharges on account of "earth and moorum filling, and pavement work," also in the supply of "chunam, rough stone, and sand," and further the pay of "certain cartmen." With regard to the difference shown by the surveyors in reference to the "fillings" and the "pavements," the prisoners try to prove that there were enormous holes requiring to be filled, and that the surveyors did not allow for these; but they utterly fail to prove the truth of their statements; moreover, had such been the case, *i. e.* holes sufficiently large to account for

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the enormous deficiency, it could have been proved in a number of ways. With regard to the chunam, rough stone, and sand, in the absence of any apparent motive for giving a false return of the articles they supplied, the evidence of the witnesses Huree and Apa (Exhibits Nos. 21 and 26) must be accepted as true. With regard to the cartmen entered in the muster roll, the prisoners assert that they were actually employed, contending that some carts must have been employed; but the work being done by contract, the necessity for employing carts and charging them to Government does not appear. After a careful perusal of the evidence, the Court cannot but think that the crime with which the prisoners Nos. 1 and 2 are charged is clearly and satisfactorily proved. They are pronounced guilty.

The evidence against prisoners No. 3 (Munohur Gopal) and No. 5 (Ramchunder Girmajee) is not of so satisfactory a nature; they are therefore released.

The prisoners have endeavoured to prove that the witnesses for the prosecution were suborned; but though the Court regrets much to observe the unusual and irregular course in taking the depositions of the witnesses adopted, when the frauds were in the first instance under investigation by the Engineer Department, it sees no sufficient grounds for allowing such irregularity to overweigh the very clear evidence against the prisoners. The position of the Officer conducting the preliminary investigation is a sufficient guarantee against even the suspicion of "tampering" suggested by the prisoners at various stages of the proceedings.

The prisoners No. 1 (Anajee Govind) and No. 2 (Ramchunder Dajee) having been convicted of breach of trust, and No. 4 (Ramchunder Gungadhur) of aiding and abetting in the above, the Court passes the following sentence:—

That you, Anajee Govind and Ramchunder Dajee,

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under Act XIII. of 1850, Section IX., be imprisoned, without hard labour, for the space of two (2) years; and you, Ramchunder Gungadhur, under the above Section and Act, in connection with Regulation XIV. Section I. Clause 5th, of 1827, be imprisoned, without labour, for the space of one and a half (1½) year.

C. M. Harrison, Acting Session Judge.

Review by the Acting Session Judge on Appeal.—After a careful and attentive perusal of the proceedings in this case, the Court can only come to the same conclusion as the Acting Assistant Session Judge has arrived at, regarding the guilt of the prisoners Anajee Govind, Ramchunder Dajee, and Ramchunder Gungadhur, and it sees no cause for interfering either with the conviction or sentence.

Mr. Kemball states their assertion, to the effect that he refused to record the evidence they brought forward, is groundless, and certainly every latitude seems to have been afforded them in the conduct of their defence. The evidence of the witnesses who surveyed the works being quite satisfactory and conclusive, their request to have them re-surveyed in their presence was of course inadmissible, and it does not appear to the Court that any documentary proof, the examination of which would in any way have benefited the prisoners, has been overlooked.

The deposition No. 77 should not have been entered in the absence of the deponent without evidence of his inability to attend being first recorded (which the report No. 76 is not), and it should then have been proved by the attesting witnesses thereto. (See the Sudder Foujdaree Adawlut's Circular No. 1992, of 26th August 1845.)

The petitioners are to be informed that their petition is rejected, and the papers and proceedings in the case returned to the Acting Assistant Session Judge.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The prisoners in this case have been convict-

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ed; Anajee and Ramchunder Dajee of breach of trust, and Ramchunder Gungadhur of aiding and abetting in defrauding Government.

The trial has not been conducted in a satisfactory manner, and I do not consider that the responsibility of the prisoners under Act XIII. of 1850 is made out.

The inquiry is divided into the headings of six bridges, at the building of which frauds are alleged to have occurred. But each fraud charged should have formed the subject of a separate case, instead of all being thrown into one trial in the confused manner exhibited in these proceedings.

There are many documents put on record on the part of the prosecution without their being proved, so that they were not legal evidence against the prisoners; and from the manner in which they are often referred to, it is impossible to recognise them, so as to follow the Court in the train of reasoning which led to the conclusion reached.

The first prisoner found guilty is Ramchunder Gungadhur, of aiding and abetting in defrauding Government. It was out of place taking his case first, because, if the charge were not established against the principals it would fail against him, the aider. He is represented as a Hindoo beggar, and it is alleged that he personated a contractor. It must be under rather a loose supervision that such a thing could be possible. Looking, however, to the case of the other prisoners, I do not find that, as overseer of works and Karkoon, they can be held liable under the Act quoted for the conviction.

It is not shown that either of them had the control or custody of money entrusted to them, and such responsibility is not included in the Assistant Session Judge's summary of their duties and liabilities. They must, therefore, on this ground alone, be acquitted, and the charge against the prisoner Ramchunder Gungadhur fails at the same time.

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I observe that the prisoners in their defence appealed to the estimates for the works. These were not produced, but their existence is not denied. They called for Mr. Gilmore, the Officiating Executive Engineer who prosecuted them, as a witness, but he excused himself on the ground of indisposition from attending. This excuse was not admissible, and it was the more necessary that he should have been present, inasmuch as grave exception is taken to the manner in which a preliminary inquiry was conducted by him, it being alleged that he gave money and employment to witnesses who deposed against the accused, and deprived others of their places who gave evidence in their favour. Suspicion must always attach to a prosecution in which such means are resorted to, and I cannot concur in the Assistant Session Judge's remark in reference to the imputation, for no Officer's position would account for proceedings which, while unexplained, are liable to much reprehension. The prisoners should be acquitted and discharged.

R. Keays, Acting Puisne Judge.

Minute by Mr. Keays.—I am of opinion that the conviction of the prisoners under Act XIII. of 1850 is not legal. From the Assistant Session Judge's finding, it is evident that not one of the prisoners possessed, had receipt, or custody, or control of money, or valuable security in trust for Government or any other person. The only person who had control over money at all was prisoner No. 3, the Hoozoor Karkoon, who has been acquitted by the Assistant Session Judge, and his duty it was to see that the work was performed according to the returns, and pay the money. The other prisoners therefore must be acquitted. It is useless to enter further into this case, in which I am sorry to find so many errors in procedure. Papers have been recorded without having been proved; secondary evidence has been received when better evidence was available; and the prisoners have been convicted of embezzlement as well as for fa-

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bricating false accounts, both of which are not competent under Section XVII. of Act XIII. of 1850.

The case was a very difficult and intricate one, and it is to be regretted that the Session Judge felt himself obliged to refer it for trial to his Assistant, whose want of experience has led him to make the mistakes which I have felt it my duty to notice.

Resolution of the Sudder Foujdaree Adawlut.—The prisoners are acquitted and to be discharged.

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KAIRA.

Present, WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, Puisne Judges.

[Cases Nos. 66, 67, and 68 of the Calendar of the Ahmedabad Session Court for 1856. Committed by the Third Assistant Magistrate of Kaira, J. MORIARTY, on the 9th, 26th, and 28th April 1856. Tried by the Assistant Session Judge of Ahmedabad, C. WALTER, on the 7th, 8th, and 13th May 1856. Reviewed on appeal by the Session Judge, A. B. WARDEN, on the 31st May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Wilful Perjury; Forgery; Making a Fraudulent Use of a Forged Document, knowing it to be such, and Aiding in the above Fraudulent Use.

Prisoner in Case No. 66.—Chutoor Becher, Wania, aged 23.

67.—Tikum Kandas, Wania, aged 53.

68.—No. 1, Tikum Kandas, Wania, aged 53.

No. 2, Chutoor Becher, Wania, aged 23.

Charge in Case No. 66.—Wilful perjury; in having, on the 4th January 1850, (corresponding with Sumvut 1912, Margsheersh Wud 11th,) in the Court of the Sudder Ameen at Kaira, on solemn affirmation, deposed to the truth of a bond, dated Sumvut 1901, Margsheersh Wud 6th, purporting to have been passed by Baee Jusee, wife of Kandas Soorchund, mortgaging, as security for the debt, costs said to have been appor-

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tioned in a decree given by the Sudder Ameen at Kaira, in a Case No. 1038 of 1852, which bond the prisoner knew to be a forgery.

Charge in Case No. 67.—Perjury; in having, on 31st December 1855, (corresponding with Sumvut 1912, Margsheersh Wud 8th,) in the Court of the Sudder Ameen at Kaira, on solemn affirmation, deposed to the truth of a bond, dated Sumvut 1909, Margsheersh Wud 6th, purporting to have been passed by Baee Jusee, wife of Kandas Soorchund, mortgaging, as security for a debt of Rs. 14-8-0, certain costs, purporting to have been apportioned in a decree given by the Sudder Ameen of Kaira, in a Case No. 1038 of 1852, which bond he knew to be a forgery.

Charge in Case No. 68.—Against prisoner No. 2 forgery; in that, on some date, &c. and place unknown, but on some date, he did fabricate a bond for Rs. 14-8-0, purporting to have been passed to one Tikum Kandas of Kaira for Rs. 14 by one Baee Jusee, deceased, on the 6th Margsheersh, Sumvut 1909.

Against prisoner No. 1, making a fraudulent use of a forged document, knowing it to be such; in that, on the 18th October 1855, (8th Ashad Shood, Sumvut 1911,) he filed a suit in the Kaira Civil Court, laying claim to certain sums in deposit on behalf of the said Baee Jusee's heirs in the Kaira Sudder Ameen's Court, and filed with his plaint the forged bond, in support of his claim, knowing it to be such.

Prisoner No. 2 is further charged with aiding in the above fraudulent use; in that he gave false testimony to the truth of the same in the Court of the Sudder Ameen of Kaira, on the 4th January 1856, Margsheersh 11th, Sumvut 1912.

The prisoners plead not guilty.

C. Walter, Assistant Session Judge.

Finding by the Sessions Court in Case No. 68.—The prisoners are charged with forgery, and making a

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fraudulent use of a forged document, severally. They plead not guilty. There is a further charge against prisoner No. 2 (Chutoor) of aiding in the fraudulent use by giving false evidence; but as this forms the subject of a separate case against him, it need not be entered upon here.

The writing of the bond and the use of it are not denied by either prisoner. The only thing that it is required for the prosecution to show is, that the bond is not what it purports to be, viz. passed by Baee Jusee in Sumvut 1909, in other words, it must be shown that it is a forgery.

In the first place, the only attesting witness denies his attestation of it. His handwriting, as tested before the Court, resembles that which purports to be his in the bond, but it may have been easily imitated; and, on the other hand, if he really did sign it himself (as is quite possible), this does not of itself show that the bond is a genuine document; it only shows that there was another party originally in the fraud, who, when discovery was made, did not care to back out his companions. Fortunately, the Court can show that the bond stands as a forgery, entirely independently of Lulloo's admission or denial that he witnessed it. If he signed it, he signed it fraudulently, if not, why should he deny that he did so?

The bond purports to be of the date of the 6th Margsheersh Shood, and for Rs. 14-8-0, passed to prisoner No. 1 (Tikum) by Baee Jusee, deceased, in consideration of money advanced, and passing in 'san' to him the costs which were alleged to have been apportioned in the decree of Suit No. 1038 of 1852. On examining, however, the decree in question, it turns out that the said decree was not passed until a month and some days subsequent to the date of the bond, so that what purports to have been passed in san on the date of the bond had actually on that date no existence.

The bond (as no explanation of this is offered) stands

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thus on this ground alone as a palpable forgery, for how could it have been known in advance on whom the costs would fall? or, if a guess could be made, who in his senses would take such a contingency in security for his debt, and how could costs be talked of as apportioned in a decree when the decree had itself on that date no existence? Further, at the time the decree was passed, the costs, as apportioned, were Rs. 13-7-7; a bond taken on or about that date, in which these costs were passed in san, would represent them as of that amount (say Rs. 13-8-0), for the costs only amounted to Rs. 14-8-0 when a copy of the decree had subsequently been taken. This indicates that the date on which the bond was written is subsequent to the date of the costs being so augmented. Again, if Baee Jusee had passed a bond for the expenses she had incurred in the suit, which was going on all the time at interest, how is it to be explained that she or her heirs did not motion to recover this sum at once from their judgment debtor, and thus relieve themselves from a useless and daily increasing amount of interest and debt by paying it off at once? They did not, however, motion for nearly two years and a half after the date of decree so to recover, which surely affords the strongest of presumptions that the bond is not of the age it purports to be, but is of a recent fabrication.

Again, why should he sue on a bond taken from his own relation? The natural answer is, because there was a dispute, and he could not get his money; but this is shown in every way not to be the case. In the first place, the very motion which was made two and a half years subsequently to recover the apportioned costs is in prisoner Tikum's own handwriting, which shows at least that there was no dispute regarding the sum between them before the suit was filed, and the subsequent conduct of the defendants, when the suit came on for hearing

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in appeal, equally showed that they were of one accord then. For after the proof had been broken down, and the Sudder Ameen had sent in a report suggesting criminal proceedings, these very relations, who required to be sued before they would pay, voluntarily come forward and try to be burthened with the amount of the claim and costs.

The whole tenor of the case leaves no doubt that the circumstances were as follows:—Baee Jusee's heirs having motioned to execute their deceased relative's decree against her judgment debtor, he paid into Court about Rs. 15, which the costs amounted to. Two creditors of these heirs put forward claims to receive the amount thus in deposit in execution of decrees of their own, and there can be no doubt that the heirs must have had fears that the 'durkhasts' thus put in would be executed as desired, since it was merely an objection which they would not have foreseen which prevented the award to them. How was this to be provided against? The right called san has until lately been very much upheld in our Courts.

The Native Judges have been in the habit of giving the same preference to 'san khuts,' which, in consequence of the restrictive provisions of Regulation V. of 1827, Section XV., is usually awarded to 'giro khuts,' when, the property being held by the creditor, he is to look to it as the sole security for his debt. A san khut would, therefore, answer the purpose of diverting the sum in deposit from the pockets of the other creditors, and one was accordingly framed, and Tikum sued his relations upon it, and they, though the 'zahirnama' issued reached them, did not appear to defend the suit, on the supposition that a decree would forthwith be passed. The plot was likely to have succeeded well, for, had it not been for the fatal mistake in the date inserted, the Sudder Ameen would have contented himself doubtless

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with the affirmation of Tikum, and would have given a decree after an *ex parte* inquiry. It may further be noticed decidedly in support of this view, that the bond is drawn up in such a manner as would lead to the supposition that it was intended for a purpose of the kind. There is no binding of person and other property in the case of the property given in san not proving sufficient to liquidate the claim, and at the end occurs the significant sentence that no one else has any right to the said costs given in san. It remains to notice another point which prisoner has also raised in his defence. After the suit was filed, but shortly before it came on for hearing, the durkhasts of the opposition creditors had been thrown out; and the argument might be used, that as the cause for which a forged bond had been sued on no longer existed, why should not Tikum have withdrawn his suit by razeenama, if the bond was a forgery, and thus have escaped all further risk? The Court has given this much consideration. As the orders on the durkhasts were given only shortly before, it is possible that Tikum may not have been made aware of it. Again, if he had been aware of it (being of course in ignorance of the discrepancy in dates), he would have no fear of detection, since he must have been certain that his confederates (the opposite party) would not appear, and that therefore the suit would go *ex parte*, while, if he gave in a razeenama just at the moment when, by other parties' claims being rejected, he had a greater chance of obtaining his own, he might have raised suspicion in the Sudder Ameen's mind, and thus subjected the false bond to more severe scrutiny than if it went through the ordinary procedure. There is, on the other hand, something connected with the rejection of these claims, supposing Tikum to have been aware of it, which convinces the Court as much as anything else that the bond is a forgery, and that the suing upon it

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was altogether a sham, to defeat the rights of other creditors. The other creditors' claims having been thrown out, the Sudder Ameen proceeded to pay the money in deposit to Baee Jusee's heirs, and this he did without any objection being raised by Tikum. Now, is it credible that he would, if his claim had been a *bonâ fide* one, have sat quiet while this was being done?—would he not have done his best to obtain retention of the money in deposit until his claim, which was just coming on for hearing, was adjudicated? But he did nothing of the kind, and allowed money to pass unquestioned into the hands of the opposite party, whom he had just been at the expense and trouble of suing to obtain for himself.

It remains to notice the evidence brought forward by the prisoners. It is at the best secondary evidence, which would be utterly inadmissible in support of the bond anywhere else than in a defence. The recklessness of the witnesses with regard to dates has been exposed sufficiently when they admitted that they could not speak to a date of quite recent occurrence, viz. the one on which they were examined by the Assistant Magistrate; and it would be puerile to suppose that they could have any detailed recollection of the conversation between Tikum and Baee Jusee, such as they depose to. But, allowing them credit, and supposing all they depose to is true, they only show that, on the date in question, Tikum took a bond from Baee Jusee for Rs. 14-8-0, which Chutoor wrote; but that does not prove that the bond was the one sued on. From the nature of the case it would not be so as above shown, and they none of them assert that it was. It is of course possible that Baee Jusee did pass a bond to Tikum on that date, but that bond did not certainly pass the costs in san. If a bond was taken on that date, this might account for the fatal date having been allowed to remain, supposing the present forged one to have been compiled in substance partly

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from a genuine one of that date. But the Court does not think that these witnesses are entitled to the slightest credit; nor does it think it likely that Tikum had really advanced any money at all on account of the expenses of the suit, thus putting Jusee in his debt; first, because if he had, as above noticed, Jusee would have taken care to recover at once from her judgment debtor, and to have paid Tikum off; and secondly, if Tikum advanced the money, as his evidence would show, in instalments, there must be accounts forthcoming bearing record of such advances; but the books are withheld, and this not without reason, for Tikum is shown by his own evidence to have considerable dealings on current accounts. While these are withheld, the Court cannot credit the oral testimony to the advances, which Tikum can have produced without difficulty.

With regard to Chutoor, his only argument in defence is, that he was unaware of the contents of the bond; that is, that he did not compile it from his own knowledge, but from the dictation of the parties. This does not in any way account for, or excuse him for having written a bond with a false date. In his case motive is shown. It is to be presumed, however, that he did not do so unless it was made worth his while.

Prisoners accordingly stand convicted: prisoner No. 2 of forgery; in that, on date and place unknown, he did fabricate and forge a bond, purporting to have been passed by one Baee Jusee to one Tikum Kandas, for Rs. 14-8-0, on the 6th Margsheersh, Sumvut 1909.

Prisoner No. 1, of fraudulently and knowingly making use of the document so forged; in that, on the 18th October 1855, (8th Margsheersh, Sumvut 1911,) he filed a suit in the Kaira Civil Court against Baee Jusee's heirs, praying to recover certain money lying in deposit in their names, and did produce, in support of such claim, the said bond, knowing it to be a forgery.

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And the Court having found the prisoners guilty as above, reserves its sentence, it having still to record its finding in the two accompanying cases, Nos. 66 and 67.

Finding and Sentence in Case No. 66.—The prisoner stands charged with wilful perjury; in having given a deposition, on solemn affirmation, in the Sudder Ameen's Court at Kaira, to the truth of a forged bond.

The giving of the deposition is not denied by the prisoner; the only question is, whether it was false evidence he gave, or true. The Court has this day recorded its finding in Case No. 68, in which the bond, to the genuineness of which he deposed, has been proved to be a forgery by the hand of prisoner, so that prisoner's evidence in support of it was wilful perjury. Similar evidence to what was recorded in that case is contained in the above proceedings.

Prisoner is convicted of wilful perjury; in that, on the 4th January 1856, (11th Margsheersh Wud, *Sumvut* 1912) he deposed, on solemn affirmation, in the Court of the Sudder Ameen of Kaira, to the truth of a bond purporting to have been passed by Baee Jusee on the 6th Margsheersh Wud, Sumvut 1909, which bond prisoner knew to be a forgery.

And the Court having found the prisoner guilty in this case, and also of forgery in Case No. 68, proceeds to take into consideration that his guilt is of a much less deep dye than that of his fellow-prisoner in that case, for he is not shown to have had personal interest in the affair. The Court accordingly proceeds to pass the following sentence:—

That you, Chutoor Becher, be imprisoned, and kept to hard labour, for a term of six (6) months. (Regulation XIV. of 1827, Sections XVI. and XVII.)

Finding and Sentence in Case No. 67.—The prisoner is charged with wilful perjury, and pleads not guilty. The deposition in which the perjury is contained is not

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questioned by prisoner. The only thing then to be seen is, whether the evidence he gave therein was true or false. The Court has this day recorded its finding in Case No. 68, in which the bond has been proved to be a forgery, and the same evidence on which it was proved so is recorded in this case also. It need not be here recapitulated or entered upon again. No doubt then exists that prisoner is guilty of wilful perjury.

He is accordingly convicted of such; in that, on the 29th December 1855, (8th Margsheersh Wud, Sumvut 1912,) he deposed, on solemn affirmation, in the Court of the Sudder Ameen of Kaira, to the genuineness of a bond, dated 6th Margsheersh Wud, Sumvut 1909, purporting to have been passed to him by Baee Jusee on that date, but which he, at the time, well knew to be a forgery.

And the Court, having found the prisoner guilty as above, proceeds to take into consideration the nature of the offences above charged, as also the prisoner's conviction on this date in Case No. 68, of making a fraudulent use of a forged document. The Court feels that an example is called for, as the punishment in the cases of the Vakeel Jeyshing Nanabhaee (Nos. 137 and 138 of the General Calendar of 1855), which were under investigation at the time that this offence was committed, and in the same locality, has not proved sufficiently so. The Court would have combined flogging with its sentence, only that the age of the prisoner precludes its doing so.

On a full consideration of the case, and under the provisions of Regulation XIV. of 1827, Sections XVI. and XVII., the Court proceeds to pass the following sentence:—

That you, Tikum Kandas, be imprisoned, and kept to hard labour, for a term of two (2) years.

A. B. Warden, Session Judge.

Reviewed by the Session Judge on Appeal.—The prisoner No. 1 has been convicted of making a fraudulent

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use of a forged document, and the prisoner No. 2 of having forged the said document. The evidence recorded in this case proves that prisoner No. 2 was the writer of the document alleged to have been forged, and that the prisoner No. 1 produced the said document as evidence in the Native Judge's Court. Neither of these facts is denied by the prisoners; the defence set up by them is, that the document in question, which is a bond, has not been forged. The bond purports to have been passed by a woman named Jusee (who is now dead), making over to the prisoner No. 1 the amount of costs of a suit, but the bond is dated 6th Margsheersh Wud, Sumvut 1909, prior to the decree passed in the said suit. Again, the bond has affixed to it the signature of only one witness, and that witness denies that it is his signature. On comparing the alleged signature of this witness with his signature on other documents, there is a slight dissimilarity apparent. The Court further notices that a vacant space has been left in the bond for the signature of another attesting witness. If the bond was a genuine document, why was it not attested by another witness? for the evidence adduced by the prisoners in their defence shows that other witnesses were procurable. The Court is fully satisfied of the bond having been forged with a view to defraud the heirs of the deceased.

The conviction is therefore upheld. The prisoners have further been respectively convicted by the Assistant Session Judge of perjury; in having deposed, on solemn affirmation, that the bond in question was a true bond, and had been executed by the deceased, but as the said bond has been proved to be a forgery, the charges of perjury on which these prisoners have been respectively convicted must be upheld. The Court, under the above circumstances, sees no reason for interfering with the conviction and sentences; the petitions of petitioners are therefore rejected.

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W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The finding and sentences in these cases cannot stand. No forgery has been committed, because the utmost that is proved is, that the Jusee, as her heirs admit, passed a bond, or that they passed one in her name, and that was antedated; and the charge of forgery failing, the charge of perjury in swearing that the bond was true must fail also.

There certainly is much ground for suspicion in the case, as shown by the Assistant Session Judge in the 7th and following paragraphs of his finding in Case No. 68, but with the heirs on the prisoners' side, the charge of forgery never could be proved. If, as the Assistant Session Judge suggests, this bond was fabricated by the prisoners together with the heirs, in order to injure the other creditors, these latter should have been made complainants against the present prisoners and Jusee's heirs for the conspiracy, and then the real circumstances of the case might have been developed. With no complainant in the case, the Sudder Ameen will find it almost impossible to obtain a conviction on a charge of forgery, however suspicious the case may appear.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—In this case the Assistant Judge has exhibited much zeal in the exposure of what certainly carries with it strong suspicion of fraud, and has well set forth the grounds of his conclusion that the prisoners are guilty. On full consideration, however, I concur with my brother Judge that the forgery and fraudulent use of a forgery are not established.

The fraudulent use of a document must be proved, and not be matter of suspicion only, however grave that suspicion may be.

The careless method of entering dates in these proceedings should be noticed to Mr. Walter. In one sentence we have an English date, and in the other a Hindoo

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date,—sometimes one, sometimes the other. One or the other, or both together, ought to be adopted throughout a trial.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoners to be discharged.

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Present, WILLIAM EDWARD FRERE, ROBERT KEAYS, Puisne Judges.

[Cases Nos. 41, 42, and 43 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the Third Assistant Magistrate, H. B. LINDSAY, on the 17th March 1856. Tried by the Assistant Session Judge, C. WALTER, on the 3rd, 4th, 5th, 7th, 9th, 14th, 15th, 16th, 17th, 18th, 29th, and 30th April; and 3rd, 5th, 12th, and 14th May 1856. Reviewed by the Session Judge, A. B. WARDEN, on the 22nd, 30th, and 31st May 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Breach of Trust by Embezzlement; and Breach of Trust and Fraud.

Prisoners in Cases Nos. 41, 42, *and* 43.—No. 1, Mokum Nalchund, Wisa Porwad Wania, aged 35.

2, Hureevulubh Jetha, Wisa Porwad Wania, aged 30.

Charge in Case No. 41.—Breach of trust by embezzlement; in having, as Goomashtas of Wadilal Panachund, and, as such, conducting his monetary affairs, on Sumvut 1909, Magh Shood 5th, (February 13th, 1853,) credited Rs. 1,145 in his accounts as received from Veerchund Sobhag, as follows:—

Rs. 350 cash received on his account from Jumna Heerachund, Rs. 800 to credit in the said Jumna's books; which last sum was, however, credited in Jumna Heerachund's books in the name of the prisoner Mokum Nalchund, thereby causing their employer, Wadilal, a corresponding loss.

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Charge in Case No. 42.—Breach of trust, and further with fraud; in that, they being the Goomashtas of Sowkar Wadilal Panachund, and being entrusted with the management of his commercial affairs and monetary transactions, between Sumvut 1910, Chuitru Wud 10th, (April 22nd, 1854,) and Sumvut 1910, Ashad Wud 10th, (October 16th, 1854,) by making fraudulent entries in the books of their master, embezzled Rs. 8,627 of their master's money.

Charge in Case No. 43.—Breach of trust, and further with fraud; in that, they being the Goomashtas of Sowkar Wadilal Panachund, and being entrusted with the management of his commercial affairs and monetary transactions, between Sumvut 1911, Kartik Shood 10th, (October 11th, 1854,) and Sumvut 1911, Magh Wud 9th, (February 11th, 1855,) by making false entries, &c. in the books of their master, embezzled Rs. 2,055 of their master's money.

The prisoners plead not guilty.

C. Walter, Assistant Session Judge.

Finding by the Sessions Court in Case No. 41.—The prisoners are charged with fraud and embezzlement, under Act XIII. of 1850, Section VIII., and also under Regulation ——.

The sum which the prisoners are charged with making away is Rs. 350, and occurs in this way:—Wadilal having granted 'hoondies' to a large amount to one Veerchund Sobhag Veerchund, in part payment thereof gave him a credit of Rs. 1,145 in one Jumna Heerachund's books, and accordingly debited that amount against his name. Jumna Heerachund paid Rs. 350 in cash to Wadilal, but the remaining Rs. 800, instead of being credited to Wadilal, were credited to prisoner No. 1 (Mokum). This was found on examining Jumna's books, for in Wadilal's 'nond' (page 31), the Rs. 800 stand credited to Veerchund Sobhag, and debited [illegible]umna Heerachund. It is so credited and debited (Wadilal alleges) in the hand

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writing of prisoner Mokum's son, Dola, but his handwriting the Court does not hold to be sufficiently proved. Thus far it appears that Rs. 800, which should have been credited to Wadilal in Jumna's books, were credited to Mokum (prisoner No. 1). There has nothing as yet been shown to implicate Hureevulubh in it, except that his name is mentioned as the bearer of the balance of Rs. 350, paid in by Jumna Heerachund in cash. This, however, is a true item, as far as it goes. But in the same manner as the debit for Rs. 800 appears in Wadilal's books, so does a credit item appear for Rs. 450 in the nond book, at page 46, purporting to be of the same date, viz. 5th Magh Shood, as received from Jumna Heerachund, and as debited in its turn to one Kusulchund Vechraj. Jumna Heerachund's books do not show this transaction, so that, as Wadilal asserts, the sum may have been received from other debtors during the manifold dealings conducted by prisoners, and, when placed to his credit at Kusulchund's, entered in the nond as received from Jumna Heerachund. As, however, there is no proof of this, and the sum is at Kusulchund's at Wadilal's credit, it has been looked upon as a partial offset against the Rs. 800, and, being deducted, leaves a balance of Rs. 350. The entry of this Rs. 350 in the nond is distinctly shown to be in the handwriting of prisoner Hureevulubh; in its corresponding entry in the 'ankra wuhee' the same is entered, and this item is proved to be in Mokum's handwriting. But, with regard to this item, neither is there a corresponding debit of Rs. 350 in Jumna Heerachund's books, which was wanting in the case of the item of the amount in Mohunlal Jetha's books; so that this sum has been appropriated, and that Wadilal has been cheated out of it there can be no doubt.

Now is there evidence to prove that the prisoners appropriated it, or that they have otherwise brought themselves under the Act?

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The Court distrusts the evidence to the compromise being offered by prisoners and rejected by Wadilal. The two witnesses to it disagree in many details in their story. The prisoners admit that they went to Bombay when the matter was found out. They do not pretend that they asked their employer's leave. There can be no doubt that they did get out of the way until the matter had blown over a little, so that they might have a chance of obtaining favourable terms with Wadilal. It is not in evidence that they were ultimately seized. They appear to have presented themselves of their own accord.

No one else than himself could have had any possible motive in getting the sum credited in Mokum's name in Jumna Heerachund's books: that it was done with his knowledge and connivance is clear, by two at least of the items connected with it in the ankra wuhee being in his handwriting; but, besides all this, Jumna Heerachund's Goomashta has given evidence (No. 11), in which he distinctly deposes that prisoner Mokum personally transacted the whole business. A matter of this description is not susceptible of more proof than the above, and the Court is perfectly satisfied both that the money was appropriated, and that it was appropriated by Mokum.

The Court has not entered here on the question about whether Wadilal was in debt to Mokum on account of the Rutlam hoondie or not, for complainant denies that he is so. His accounts (No. 25) show corresponding items of debit and credit in the matter, and prisoner has not attempted to prove that anything is outstanding. The matter is therefore irrelevant, and besides, the whole matter of the hoondies, from beginning to end, is now denied by prisoner in his defence. Mokum's defence is rested on an assertion that he is a partner and not a Goomashta of Wadilal's. This would be a good defence if he could establish it, since it would exempt him from the operation of the Act; but the parole evidence he has

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produced only goes to show, if believed, that Wadilal allowed him at the rate of an anna or two per rupee from his partnership with one Goverdhun Kallian and another in gambling transactions, which the Court is aware is done in this city by Setts to their Goomashtas, and cannot affect their subordinate position in the shop, for the 'sutta' trade is distinct from the 'sowkaree.'

Prisoner requested the Court to make Wadilal produce his sutta books, which he did when told to do so. Prisoner has not wished to record any extract. Their contents are not favourable to his defence.

Prisoner Mokum is accordingly convicted of embezzlement; in that, he being a Goomashta of Wadilal Panachund, and entrusted with the management of his monetary affairs, did, on the 5th Magh Shood, Sumvat 1909, (13th February 1853,) when recovering a sum due from Veerchund Sobhag to his Sett, obtain a *credit* of Rs. 1,145 at one Jumna Heerachund's (which was thus a valuable security under his control in trust for his Sett), and did fraudulently dispose of a portion of the same to his own benefit, in breach of the trust reposed in him, by causing Rs. 800 of the same to be credited to himself instead of his employer, thereby causing his employer an ascertained loss of Rs. 350. (Act XIII. of 1850, Section VIII.)

There is nothing to prove that Hureevulubh (prisoner No. 2) appropriated any of the said sum, but his entries in the nond book of Rs. 350, credited to Jumna Heerachund and debited to Mohunlal Jetha on account of the same matter, have been clearly proved to be false and fraudulent, and he, being the Putavnar of the firm, was responsible for the correctness of the items entered as passed on the exchange. It is not even urged by him that he acted under the instructions of Mokum; a conviction, therefore, on the present charge, is competent against him under Section XVII. of the above Act. He

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is accordingly convicted of such, in that, he being the Putavnar of the firm, and as such responsible for the items entered as having been passed on exchange, did fraudulently make up false accounts by showing, on the 5th Magh Shood, Rs. 350 as credited to Parék Jumnadas Heerachund and debited to Mohunlal Jetha, the same items being utterly false.

And the Court, having found the prisoners guilty as above, would have proceeded to pass sentence, but there being still two cases against them which are not completed, the amount of punishment to be awarded cannot now be determined. Sentence is therefore reserved.

Finding in Case No. 42.—The prisoners are charged between them with embezzling upwards of Rs. 9,000 of their master's money, between the 22nd April and the 16th October 1854. They plead not guilty. The charge also includes the offence of making up false accounts, as punishable by Section XVII. of Act XIII. of 1850. As the proceedings are long, the items numerous, and the dates on which the items are alleged to have been embezzled distinct, it will be most convenient to take each item by itself, to show how it is proved or otherwise in the foregoing evidence, and to dispose of each in its turn. The first item is one of Rs. 1,000. In the nond book, at page 62, Rs. 270 are credited to one Nuthoo Sayukrun and debited to one Goverdhun Peetamber in prisoner Hureevulubh's handwriting. On comparing this with Nuthoo Sayukrun's 'khata' in the ankra wuhee, Rs. 1,270 appear credited in prisoner Mokum's handwriting. The difference is the additional *one* in the thousands' place, and a thousand rupees are, according to the entry in the nond, unaccounted for, and there is no corresponding item of debit to the extra thousand credited to Nuthoo Sayukrun in his khata. The account books of Goverdhun Peetamber and of Nuthoo Sayukrun show how the difference occurred, and would show that the sum was em-

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bezzled by prisoner Hureevulubh. The Rs. 270, which are a true entry, are found debited correctly in Goverdhun Peetamber's khata, and the time is shown to be correct by Goverdhun Peetamber's Goomashta (witness No. 36); and his accounts (No. 37) being included in a larger item of Rs. 1,780, Nuthoo Sayukrun's books show that they were paid by him to Goverdhun Peetamber on Wadilal's behalf. But in Nuthoo Sayukrun's books Rs. 1,270 appear debited to Wadilal in this way;—Rs. 270 paid to Goverdhun Peetamber, and Rs. 1,000 taken away cash by Hureevulubh. Of these Rs. 1,000 nothing more was seen, and there is no corresponding credit, as above seen, in Mungul Raidas's (Wadilal's) books of the said thousand. It remains to be seen what proof has been produced in support of the books, and to inculpate prisoner Hureevulubh. His handwriting is very satisfactorily established. Nuthooram Sayukrun's books are proved by Luloo Raijee (witness No. 32), who expresses his belief that the Hureevulubh entered there is the prisoner, as he always went on exchange for Mungul Raidas. But more satisfactory than this is the evidence of another Goomashta of the firm, prisoner Hureevulubh's own brother. His evidence has been taken at No. 34, and he positively deposes to his brother (the prisoner) having come on the 10th Chuitru Wud and taken away Rs. 1,000 cash Siccaie, which he caused to be placed at the debit of Mungul Raidas, as shown at page 117 of his Sett's 'rokud kurda.' His wishing to shuffle out of inculpating his brother when he first came into Court, the Court considers, adds instead of detracts from the value to be put upon his testimony. He is therefore convicted of embezzlement of this sum, under Section VIII. of Act XIII. of 1850. The only thing that connects Mokum with this item is, that the entry in the ankra wuhee has been proved to be in his handwriting; but this, as his handwriting is

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clearly proved, is sufficient for a conviction under Act XIII. of 1850, Section XVII.

The second item is one of Rs. 400. In the nond book Rs. 400 are entered in Hureevulubh's handwriting, credited to one Runchore Oomedram, and debited first of all to Jeweree Nugéndas, whose name was afterwards erased, and that of Futeesing substituted. According to this entry Rs. 400 should be at Mungul Raidas's debit at Runchore Oomedram's, and should be at credit at Futeesing Kesreesing's. Looking at Runchore Oomedram's books, the item is not at debit to Mungul Raidas. Looking at Nugéndas's books, the sum is not indeed at credit to Mungul Raidas, but it is at credit to prisoner No. 1 (Mokum), in whose handwriting the sum is entered in Mungul Raidas's ankra wuhee. Looking at Hateesing's books, that sum is not credited to Mungul Raidas; so the subsequent substitution of his name is beyond doubt a fraudulent entry. It appears that this prisoner *appropriated* it from this. The item is in his handwriting in the ankra wuhee. Further, the Goomashta Gunput (witness No. 47) deposes that in the month of Wuishuk of Sumvut 1911, Mokum came to him with the books and told him that he (Gunput) had made a mistake in writing down Nugéndas Kesreesing's name in the 'avra,' for that he had originally made a mistake in the entry of the item in the nond, and that he had therefore changed the name therein to Futeesing Kesreesing's. Witness further deposes that when Mokum told him this, he inserted "Husle" Futeesing "Kesreesing" after the entry in the avra. There can be no doubt, then, that it was to conceal the appropriation of the sum, which, while at Mungul Raidas's debit at Runchore Oomedram's, had in fact been placed by him at his own credit at Nugéndas's, that he caused the fraudulent alteration to be made. Nugéndas's son (witness No. 42) and the accounts (No. 43) show that Nugéndas borrowed

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this sum from prisoner Mokum, which is the account on which the money came to be credited there, and it is further shown how the sum borrowed was subsequently repaid to Mokum. Runchore Oomedram's books have further been recorded at No. 39, which show three items, viz. Rs. 201, Rs. 282½, and Rs. 16½, and Rs. 400 paid on account of Mokum by Mungul Raidas at Runchore Oomedram's, and these items are those credited to Nugéndas, where the credit, as above shown, is to Mokum and none to Mungul Raidas. The credit being to him and not to Mungul Raidas, he has clearly appropriated the same. (Act XIII. of 1850, Section VIII.) There is nothing to show that prisoner Hureevulubh appropriated this sum, or aided in the appropriation, further than that the original false entry of Rs. 400 in Runchore Oomedram's name paid to Nugéndas is in his handwriting, and thus a conviction is competent against him under Section XVII. of Act XIII. of 1850.

The third item is one of Rs. 1,000. It is as follows:— In the nond book Rs. 2,507 being credited to Nurotum Jumna, Nurotum Jumna's 'khata' in the ankra wuhee appears as subsequently altered to Rs. 3,507. The entry in the nond is in Hureevulubh's handwriting, that in the ankra wuhee in Mokum's (prisoner No. 1). The Rs. 3,507 entered in the ankra wuhee tallies with the entries in Nurotum Jumna's books, in which Rs. 3,507 stand at debit. There is, however, no corresponding debit item to account for the extra thousand thus at credit to Nurotum Jumna in Mungul Raidas's books, so a loss to that extent is apparent. It went as follows. Of the Rs. 3,507 debited to Mungul Raidas in Nurotum Jumna's books, Rs. 300 are put down as cash paid to Hureevulubh, and Rs. 424½ are put down as paid to Jetha Lukmichund on behalf of Mungul Raidas, which latter sum was also subsequently taken away by Hureevulubh. These two items leave a balance of

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Rs. 275-8-0. With regard to these it appears that Rs. 637½ had been paid to Dulput Bhaichund by Nurotum Jumna on account of Mungul Raidas. Nevertheless only Rs. 362 are at credit on this account to Nurotum Jumna in Mungul Raidas's books, and so much only debited to Dulput Bhaichund. On further examination of Mungul Raidas's books there is an entry of Rs. 275-8-0 credited to Oomed Hukumchund, and debited to Dulput Bhaichund, but he (Dulput) had been already paid his whole due (Rs. 637½) from Nurotum Jumna's, and he got no more than this: so this last sum of Rs. 275½, which was brought from Oomed Hukumchund's, was never paid to Dulput, but appropriated; and this makes up the thousand. The evidence inculpating the prisoners in this appropriation is most clear as regards prisoner Hureevulubh, and also as regards Mokum's knowledge of it.

In the first place Nurotum Jumna's books show Rs. 637½ at debit to Dulput Bhaichund, and also Rs. 300 cash paid to Hureevulubh, also Rs. 424½ paid to Jetha Lukmichund. These items formed a part of the accounts which were squared in the month of Kartik, and the accounts were then made up with prisoner's; for in Nurotum's 'soodawuhee' the accounts purport to have been made up with Mokum, and there is an entry of a certain sum as 'dulalee' paid to prisoner Hureevulubh. Motee Runchore (witness No. 53) further deposes to having paid the Rs. 300 from Nurotum Jumna's shop to prisoner Hureevulubh personally, as also the whole of the Rs. 637½ to Dulput Bhaichund (witness No. 54). Amichund Bulakhie (Jetha Lukmichund's Goomashta) deposes that on the 1st Ashad Shood of Sumvut 1910, he paid, through Dulal Dulput, Rs. 24½ under weight ('jankha') to prisoner Hureevulubh, and debited them to Mungul Raidas. This is all confirmed by the evidence of the Dulal, Dulput (witness No. 56), and by

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the accounts of Jetha Lukmichund's firm (No. 55). It is thus clear that these sums, viz. Rs. 300 brought cash by Hureevulubh from Nurotum Jumna's, and Rs. 424½ brought cash by him from Jetha Lukmichund's, and which he caused to be debited to Mungul Raidas, were, as they were never received at Mungul Raidas's shop, appropriated and embezzled by him. The evidence of Dulput Bhaichund's Goomashta has been taken (No. 57), and his accounts are recorded No. 58. They shew that only Rs. 637½ have been received there on account of Mungul Raidas, and that that was received in one item from Nurotum Jumna's. Thus it is clear that the Rs. 275-8-0 which came from Oomed Hukumchund were falsely entered to the debit of Dulput Bhaichund, and were appropriated, for they were never paid him. It does not appear from any of the books by whom this item was transacted on behalf of Mungul Raidas, further than that the entry of the true credit to Oomed Hukumchund, and of the false debit to Dulput Bhaichund, are written by Hureevulubh; and as the two items which he has been shown to have embezzled above, when added to this item of Rs. 275-8-0, make up the Rs. 1,000 which are gone, there can be no possible reasonable doubt that he embezzled this also. He has not shown that the item was transacted by any other item away. Mukum is also clearly implicated in the embezzlement of the whole item. For the item of Rs. 2,507 in Mungul Raidas's ankra wuhee belonging to Nurotum Jumna's khata, which has been tampered with by changing the 2 in the thousands' place to 3, is in his handwriting. It was he personally also who made up Nurotum Jumna's account with the firm in the month of Kartik. In this Nurotum Jumna was given credit for the two items of cash which Hureevulubh had taken away on behalf of the firm, and which had never been credited in the accounts of the firm. He would not have allowed them had he not been a party in

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the fraud. Again, with regard to the payment to Dulput Bhaichund, he must have seen that Dulput Bhaichund had received the whole of his due from Nurotum Jumna; he must have seen then that a less sum was credited to Nurotum Jumna in his Sett's books on that account; and he must have also been aware that the Rs. 275½ received from Oomed Hukumchund, which were entered in his Sett's books as debited to Dulput Bhaichund, were never paid there, since nothing was due; and it was only his being a party to the fraud that led him to conceal it. They are therefore both convicted of the embezzlement of this sum under Act XIII. of 1850, Section VIII.

The fourth item is one of Rs. 2,000. It is as follows. At page 109 of Mungul Raidas's nond there is an item of Rs. 615, in Hureevulubh's handwriting, credited to Nurotum Jumna, but in the ankra wuhee in Nurotum Jumna's khata is Rs. 2,615. This is in Mokum's handwriting. It is entered in this way: Rs. 615, a sum paid by Nurotum Jumna to Amabhaee Mokum on behalf of Mungul Raidas, and another item of Rs. 2,000 paid by the same firm on his account to Nuthooram Sayukrun. Both these items appear clearly from the accounts recorded to have been in fact thus paid to the parties by Nurotum Jumna on account of Mungul Raidas. Further, when Mungul Raidas and Nurotum Jumna's accounts were settled, the Rs. 2,615 were given Nurotum Jumna credit for. But at the same time, in Mungul Raidas's books the sum due to Nuthooram Sayukrun (Rs. 2,000) does not appear as paid through Nurotum Jumna in a lump, but they are entered as paid in three items, as follows: Rs. 935½ only from Nurotum Jumna; Rs. 845 from Kusulchund Vechraj; and Rs. 219½ from Mohunlal Tikum. These three items are thus entered in Mungul Raidas's nond in the handwriting of prisoner Hureevulubh, and in all the khatas in the ankra wuhee in

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prisoner Mokun's handwriting. When the accounts with these firms were made up, their totals agreed with the totals as made in Mungul Raidas's books, *these items being included*, so they obtained credit for these items as was bound to be given them, for they stood in their names in Mungul Raidas's books. It is thus clear that Mungul Raidas has paid Rs. 4,000 instead of Rs. 2,000, which latter sum was only due to Nuthooram Sayukrun, while Nuthooram Sayukrun only got the Rs. 2,000 which he was entitled to, for none of the latter three items were ever paid to him. It remains to see how and by whom these extra Rs. 2,000 were embezzled. If the accounts of Nurotum Jumna showed an item of Rs. 935½ drawn, and those of Kusulchund Vechraj and of Mohunlal Tikum items of Rs. 845 and Rs. 219½ drawn from them, then there would be no difficulty, for it would then be clear that the several sums had been drawn from them on account of Mungul Raidas, and had there been embezzled, and accounted for by debiting them falsely to Nuthooram Sayukrun; but this is not the case. It is clear that the money was drawn, for the totals of these people's accounts as they stand without these items agree with the totals as they stand in Mungul Raidas's accounts including these items; but as the items themselves do not appear, and as the sum which has been appropriated has been appropriated out of one of numerous items, it will have to be seen first of all which item the sum was taken out of, and then what person it was who embezzled it.

To begin with the item of Rs. 935½, entered as paid through Nurotum Jumna, the Court has, after great trouble, succeeded in finding out how it went.

From Nurotum Jumna's accounts it appears that a hoondee came there from Bombay for Rs. 2,500 drawn on Mohunlal Vurujlal. He did not pay, but Mungul Raidas agreed to pay the money for him, so the sum

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was debited at Nurotum Jumna's to Mungul Raya. This being the case, Rs. 2,500 should be found at Nurotum's credit in Mungul Raidas's books on this account, and at Mohunlal Vurujlal's debit, but there is nothing of the kind.

It appears, however, that Mohunlal Vurujlal paid Mungul Raya Rs. 700 through one Manchund Veerjee on this account (see page 96 of the nond book). This leaves a balance of Rs. 1,800 at Mungul Raidas's credit still with Mohunlal, which is actually shown in Mohunlal Vurujlal's rokud khurda, at pages 404 and 405, in two items of Rs. 225 and Rs. 1,575. This shows how Mohunlal Vurujlal eventually paid the Rs. 2,500 of the hoondie. But further, at page 42 of Mungul Raidas's unkra wuhee is Nurotum Jumna's khata, which goes on to page 43, and there is a supplementary khata at page 94. In this khata are three items: one of Rs. 1,139½ at page 43, and two others of Rs. 425 and Rs. 415½ at page 94, which items of credit made up the Rs. 2,500 due to Nurotum Jumna on account of the hoondie. To turn to these items of credit to Nurotum. To whom are they debited? As follows:—Rs. 700 to Manchund Veerjee, Rs. 439 to Mohunlal Vurujlal, and Rs. 425 besides are shown as cash paid in from Mohunlal Vurujlal. The three items amount to Rs. 1,564½, and the balance left of what was credited to Nurotum Jumna is Rs. 935½. This balance is credited to him at page 99 of the nond, and is then debited to Nuthooram Sayukrun. Here is the fraud; and it is unnecessary to recapitulate further how it was effected, for it is detailed in the evidence of Nurotum Jumna's Goomashta (witness No. 49), or is discoverable from the accounts of the three firms of Mungul Raidas, Nurotum Jumna, and Mohunlal Vurujlal, which have been recorded. Numerous attempts have been made to discover how the sister items of Rs. 845 from Kusulchund Vechraj, and of

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219½ from Mohunlal Tikum were taken, and the Court, having failed in doing so, called to its aid the principal Goomashtas of two of the leading merchants of the city. Their evidences are recorded Nos. 85 and 86, and it will be seen that they have been unable to discover where the frauds occurred, as was fortunately effected with regard to the item of Rs. 935½ just under consideration. It is clear, with regard to them, as also with regard to the item of Rs. 935½, that they were drawn, for the totals of these firms' accounts without them agree with the total in Mungul Raidas's books, which includes them; and as they have been paid (according to the entries which appeared in Mungul Raidas's books) to their credit (which included these items), the loss of the amount of those items to Mungul Raidas is palpable. Though, however, it has not been possible to show who actually appropriated the said items, nor, except in one case, out of which of the numerous items the said sums were embezzled, yet it is clear that the fraudulent entries are in the handwriting of prisoners; and they having made such, though the exact fraudulent appropriation out of any specific item cannot be proved against them, yet a conviction on the present charge is competent against them, with regard to this item, under Section XVII. Act XIII. of 1850.

The fifth item is one of Rs. 2,000. It is as follows:— There is a hoondie credited and received from Munsook Heerachund for that amount, and in Hureevulubh's handwriting, but there is no such hoondie issued from Munsook Heerachund's shop or debited there to Mungul Raidas, so it is a simple false entry. There are further entries, of Rs. 971 from Goolabchund Sobhag, and Rs. 589 from Bhaichund Sankla, and Rs. 550 from Mohunlal Vurujlal as paid on account of the hoondie to Munsook Heerachund. Munsook Heerachund's accounts show that these sums were never paid him, any

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more than the hoondie was issued by him. All these entries are therefore false; but what has been said above with regard to the item of Rs. 845 of Kusulchund Veehraj, and of Rs. 219½ from Mohunlal Tikum, in the last sum under consideration, unfortunately applies to the sums of Rs. 971 and Rs. 589 belonging to this. The fraud is, however, discoverable with regard to the last item of the three, viz. Rs. 550 credited to Mohunlal Vurujlal, as paid through him to Munsook Heerachund. His books, which have come with the case, have been proved, and show that the Rs. 550 are there debited to Mungul Raidas in the rokud khurda, page 407; but instead of having been credited to Munsook Heerachund they are entered as taken away cash by Hureevulubh; thus clearly showing the embezzlement of that amount by him. And he is accordingly convicted thereof, under Act XIII. of 1850, Section VIII. With regard to the remaining sum of Rs. 1,560, the entries in the ankra wuhee being all proved to be prisoner Mokum's, and those in the nond book being by Hureevulubh, and as it is apparent that the sum was enbezzled, although the actual way in which the fraud occurred is not apparent, a conviction for that remaining sum, under Act XIII. of 1850, Section XVII. is competent as regards Hureevulubh, and for the sum of Rs. 2,000 in the case of Mokum.

The sixth item is one of Rs. 2,000. It is as follows:—A hoondie of Rs. 2,490 ('salumsaie') is credited in the nond in Hureevulubh's handwriting as having come from Luloobhaee Kesreesing, on account of which Rs. 958-8-0 of Bhugwan Heerachund, Rs. 952 of Oomed Hukumchund, and Rs. 89½ of Nalchund Heerachund, are credited to them and debited to Luloobhaee Heerasing; Wadilal deposes that these three items, which are thus credited and debited, are written by prisoner Mokum's son Dolut, but this is not proved; and from the handwriting of the accounts of the shop in which he

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is Goomashta, which differs from the handwriting of these entries, the Court is inclined to believe that Wadilal is mistaken. From the evidence of Luloobhaee Kesreesing's Goomashta and his accounts, and the evidence of Dulal Jeychund Mulookchund, it is clear that the hoondie never existed. The Goomashtas of Bhugwan Heerachund, and Oomed Hukumchund, and Nalchund Heerachund have been examined, and show that none of the items credited to them were really thus paid by them, and yet that the totals of their accounts without these items, when compared with the totals of their accounts as exhibited in their khatas in Mungul Raidas's books, agree; so that it is clear that the money was drawn in some way from their firms, and that Mungul Raidas has, on the settling of the account, had to pay the money. As, however, the items alleged to have been appropriated in the charge on account of the fraudulently entered *hoondie* have in themselves no existence, and the Court has been unable to detect out of what other items the sums have been embezzled, these items must go along with those which have been considered in the same manner above. But Hureevulubh's handwriting is proved in the entry of the false hoondie, and Mokum has entered (as proved in the same manner) the false hoondie in the khata, and the false items from Bhugwan Heerachund, &c., so that for framing these fraudulent accounts a conviction on the present charge, under Section XVII. Act XIII. of 1850, is competent against them.

The seventh item is one of Rs. 117. This item purports to be in the handwriting of a Goomashta (Vurujbhookun), who is dead, and is entered in the rokud khurda as paid by Hureevulubh to Oomed Panachund on account of Mungul Raidas's sutta accounts, and it is clear that the loss of that amount has occurred, for Oomed Panachund did not receive the sum at the time through Hureevulubh or any one else. It has been paid by

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Wadilal a second time. But Vurujbhookun (who wrote the entry) being dead, and there being no evidence regarding this entry against Hureevulubh but this entry of his name made by Vurujbhookun, it cannot be said proves that he appropriated this sum, as the objection is open that Vurujbhookun may have appropriated the sum himself, and entered Hureevulubh's name fraudulently, to screen himself. This item is therefore considered not proved.

There has been, it may be said, no defence whatever set up to answer these most serious charges, or to explain away these deficiencies. Though prisoners both deny their handwriting in the items in question, yet of this there can be no doubt, nor do they attempt to show who else wrote the said items if they did not. The prisoner Mokum's line of defence was, that he was a partner and not a Goomashta; but it was shown in the finding in Case No. 41 that he had not established this, and in this case he has declined to have the witnesses therein called re-examined, though they were present, the Court having summoned them in anticipation. The Court has taken evidence to prove the suspicious death of the Goomashta (Vurujbhookun), who was cashier of the shop. He met his death by drowning, under circumstances, as the Court deems, of great suspicion, in the very same month that the prisoners decamped. The fact is valuable to the prosecution in this way, that Vurujbhookun, having been cashier, and his accounts at his death having shown a deficiency, it is seen how, with him as an accomplice, it was easy for prisoners to accomplish frauds, such as have been proved above, without the possibility of immediate detection by their employer.

The prisoners stand convicted of embezzlement; in that, on several dates between the 22nd April and the 16th October 1854, they being Goomashtas of one Wadilal Panachund, and entrusted with the conduct of

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his monetary affairs, did embezzle various sums, to the amount of Rs. 1,400 in the case of prisoner No. 1 (Mokum), and of Rs. 2,550 in the case of prisoner No. 2 (Hureevulubh). (Act XIII. of 1850, Section VIII.) They further stand convicted of fraudulently making up and furnishing false accounts of sums of money received and paid by them, amounting in the case of prisoner No. 1 (Mokum) to Rs. 7,000, and of the prisoner No. 2 to Rs. 5,850. (Act XIII. of 1850, Section XVII.)

And the Court having found the prisoners guilty as above, sentence is deferred, there being still another case pending against prisoners.

Finding and Sentence in Case No. 43.—The prisoners are charged with embezzlement of their master's money, to the amount of Rs. 2,055, during the year Sumvut 1911. They plead not guilty. It will be most convenient to take the items as they come, as was done in finding in Case No. 42.

The first item is one of Rs. 500. It cannot be said that this item, if appropriated, was appropriated with any attempt at deceit. There is no doubt that Rs. 500 were drawn by Mokum on account of Mungul Raidas's shop. Two hoondies, amounting to Rs. 2,025, were issued from Vurujbhookun Damodur's shop, one of which, the one for Rs. 500, was undoubtedly taken up by Mokum and sent down to Bombay, where it was placed to his name, and whence it was drawn by him by means of a hoondie from Mohunlal Vurujlal's shop, as appears from Mohunlal Vurujlal's books, and from the Bombay books of Mungul Raidas. Thus Wadilal was only credited with Rs. 1,525 in his Bombay books, and to make up the deficiency (for Rs. 2,025 had been expended in the hoondies from the Ahmedabad shop) a debit of Rs. 500 should appear in Mokum's khata. But this is not debited. Now if, as in former years, the khatas had been entered in the ankra wuhee by Mokum,

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and if he, after drawing the money, had fraudulently neglected to make the entry in his khata, then there would be some ground for the present charge. But this is not the case, and as Wadilal has, with his own hand, debited the whole sum to his own khata, and debited none to Mokum's khata, it gives Mokum a fair argument that Wadilal had no intention of the sum being debited to him, and that no fraud was committed; else how do the khatas in his own handwriting stand as they do? There is nothing either in any way to implicate Hureevulubh in any charge of embezzlement on account of this item, for the item of Rs. 500 entered by him in the nond was in no way a fraudulent one. This item must therefore be dismissed from the charge.

The next item is one of Rs. 415. This item was originally credited in Mohunlal's books to Mungul Raidas, and that name was subsequently erased, and Hureevulubh Jetha's name entered. So Wadilal argues from this that prisoners have embezzled the sum. But there is no one proof to show that prisoners, or either of them, had anything to do with the item, except that it is entered in Wadilal's books as Hureevulubh's khata, but this is in the handwriting of the deceased Goomashta, Vurujbhookun, who may have made what use he pleased of Hureevulubh's name, and Mohunlal is also dead,—his Goomashtas, who have been examined, can give no evidence in support of the books as to how the item was transacted. Under these circumstances, the prisoners' argument is good, that they cannot be held responsible for what Mohunlal may have pleased to insert in his books. This item, then, the Court does not consider proved.

The third item is one of Rs. 140. This is clearly an item for the Civil Court. It is not alleged by any one, with regard to this item, that prisoner Mokum has been guilty of any fraud. Wadilal's money has not yet gone,

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for he can recover the amount of the returned hoondie by coming down on Mokum for it, while the taking up a hoondee from a person who turned out unable to pay can, of itself, be looked upon as nothing more than carelessness or an error of judgment.

The last item is one of Rs. 1,000. With regard to this item, Kusulchund Vechraj's Goomashta deposes that Mokum and Hureevulubh (the prisoners) came to transact an item of Rs. 3,000, which included this one; that they took Rs. 2,000 away, cash, and told him to dispose of the other thousand by crediting the same to Nuthooram Sayukrun, which he did by crediting it to Hemchund Kupoorchund on Nuthooram Sayukrun's behalf, thus squaring the accounts of all three. There was no fraud thus far. But looking at Nuthooram Sayukrun's books, it turns out that the item of Rs. 1,000 is there, but is shown as having come in from Mohunlal Vurujlal and another party. Manchund Veerjee is introduced by name into the transaction, with which he has been shown to have had nothing to do. Thus, though Mungul Raidas had lost Rs. 1,000 by debit at Kusulchund Vechraj's, there was no compensatory credit item of the same amount to him at Nuthooram Sayukrun's. There is no actual evidence who it was, who, on behalf of Mungul Raidas's shop, made the fraudulent intermediate credit to Mohunlal Vurujlal, except that the evidence of witness No. 44 (Mohunlal's Goomashta) would throw suspicion of the matter on Mokum; and it may be inferred that, as the prisoners are proved to have commenced the transaction at Kusulchund Vechraj's, they continued it to its completion; and they have not shown that their places were taken subsequently by any other Goomashtas. So there is no reasonable doubt that they transacted it throughout. Up to this time, however, they can only be said to be implicated by suspicion.

Looking, however, at all Mohunlal Vurujlal's books,

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the sum is there debited to Nuthooram Sayukrun, and at first credited to simply 'sa khata,' with a space left, which was ultimately filled in by the words Dolut Hureevulubh, whose khata appears in Mohunlal's books. Now Dolut is, as seen in the proceedings in these cases, the name of Mokum's son, and Hureevulubh is the name of the second prisoner, which is a grave ground of suspicion that the khata styled Dolut Hureevulubh belongs to them. This would not, however, suffice; but there is something in the above proceedings which shows beyond doubt that, if the prisoner Hureevulubh may possibly have nothing to do with the khata, yet prisoner Mokum has. This is as follows. The first item looked into above was the one of the hoondie for Rs. 500. Now the money of this hoondie was above shown ultimately to have been realised by Mokum by a hoondie which he gave for Rs. 500 to Mohunlal Vurujlal. This very hoondie is entered as coming from Mokum, but credited in what khata?—that of Dolut Hureevulub; which shows beyond doubt his connection with the khata in question, and thus that the Rs. 1,000 was embezzled and drawn ultimately by him, even if his fellow-prisoner Hureevulubh had not a share in it, which cannot be said to be sufficiently proved.

The prisoner Mokum Nalchund is accordingly convicted of embezzlement; in that, on or about the 2nd January 1855, (corresponding with Poush Shood 14th, Sumvut 1911,) he did embezzle the sum of Rs. 1,000, by causing that sum, which should have been placed to his master Wadilal's credit at one Nuthooram Sayukrun's, to be placed instead to his own credit in the books of one Mohunlal in his khata there, under the style of Dolut Hureevulubh, he having been entrusted with the transaction of the item. Prisoner Hureevulubh is in this case acquitted.

The Court has thus found the two prisoners severally

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guilty on two distinct sets of charges of embezzlement during the years Sumvut 1909 and 1910, and prisoner No. 1 (Mokum) of a further embezzlement of a sum of Rs. 1,000 in the year Sumvut 1910; and proceeds to take into consideration the nature of the offences committed, and the punishment provided therefor in Act XIII. of 1850, Sections IX. and XVII., and proceeds to pass the following sentence :—

That you, Mokum Nalchund, be imprisoned and kept to hard labour for a term of (5) five years (Section IX.); and that you do further pay a fine of two thousand (2,000) rupees (Section XIII.), to be recovered, at the order of the Court, by distress and sale of your property, and, if recovered, to be paid to complainant. (Act XVI. of 1850.)

That you, Hureevulubh Jetha, be imprisoned and kept to hard labour for a term of three (3) years, and that you do further pay a fine of two thousand (2,000) rupees (Act XIII. of 1850, Sections II. and XVII.), to be recovered, at the order of the Court, by distress and sale of your property, and, if recovered, to be paid to the complainant. (Act XVI. of 1850.)

These sentences are to be subject to the confirmation of the Session Judge, and are intended to commence from the 18th April, the date on which prisoners were placed in confinement on their conviction on the first set of charges.

The Court has drawn the distinction in the amount of punishment it has awarded to the two prisoners, on the consideration of prisoner No. 1 being represented on all hands as the managing Goomashta.

A. B. Warden, Session Judge.

Review by the Session Judge in Case No. 41.—Read and recorded a letter dated 14th May 1856, from the Assistant Session Judge, handing up for confirmation his proceedings in Cases Nos. 41, 42, and 43 of 1856, in which prisoners Mokum Nalchund and Hureevulubh Jetha have been convicted of embezzlement, and of mak-

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ing up and furnishing false accounts, and have been sentenced, prisoner Mokum to five years' imprisonment with hard labour, and prisoner Hureevulubh to three years' imprisonment with hard labour, and each of the prisoners to pay a fine of Rs. 2,000, to be recovered, at the order of the Court, by distress and sale of the prisoners' property, and, if recovered, to be paid to the prosecutor. The Court, after having carefully reviewed this case, concurs in the view taken of it by the Assistant Session Judge, and sees no reason for interference as far as the conviction is concerned. The punishment awarded will be taken into consideration when the remaining charges against the prisoners have been reviewed. The Assistant Session Judge has recorded in this case extracts from the account books produced as evidence by the prosecutor and some of the witnesses; but the extracts, although purporting to be true extracts, are really not such, for there are interpolations in them, which prevent their being considered *bonâ fide* true extracts. For instance, in exhibit No. 4 there is a memo. to the effect that the original entry in the nond is in the handwriting of prisoner Mokum's son Dolut, and in another place to the effect that the original entry is in the handwriting of Hureevulubh. There are similar interpolations in exhibit No. 5 and many others. When books are produced as evidence, which, when the case is finished, will require to be returned to the parties to whom they belong, and of which copies cannot be made on account of their voluminous nature, true extracts should be made of such portions as have any connection with the matter under investigation, and at the foot thereof the words "true extract" should be written, and beneath them the signature of the Assistant Session Judge. If any remarks are needed for the purpose of making the extracts more clear, they should be written below the signature of the Assistant Session Judge, or on the back of the extract,

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and beneath the remarks the Assistant Session Judge should again affix his signature, to show that they were made by him. A copy of the above will be forwarded to the Assistant Session Judge for his guidance.

Review in Case No. 42.—The Assistant Session Judge has forgotten to specify in his proceedings the Act under which he has convicted both the prisoners of embezzlement. The papers and proceedings are therefore to be returned to the Assistant Session Judge, in order that the above omission may be rectified. The Court adjourns.

* * * * * * * *

The Court sits from its adjournment of yesterday, and resumes the Case No. 42 of 1856, which has been returned to this Court by the Assistant Session Judge with the omission duly rectified. The Court, after having gone carefully through this case, concurs in the view taken of it by the Assistant Session Judge, and considers that the guilt of the prisoners is satisfactorily established. In this case the Assistant Session Judge has committed the same error as in Case No. 41, with regard to the extracts from the 'chopras' of the prosecutor and witnesses. As an extract from the Court's proceedings in the previous case will be sent to the Assistant Session Judge, no further remarks on the subject are necessary.

Review in Case No. 43.—The prisoners in this case are accused of having embezzled different sums, amounting in the aggregate to Rs. 2,055.

The prisoners having been found guilty by the Assistant Session Judge of having embezzled only one item of Rs. 1,000, the Court proceed to take that item into consideration. The evidence of the Goomashta of Kusulchund Vechraj shows that the prisoners directed him to credit Rs. 1,000 to Nuthooram Sayukrun, and that he did so by crediting the said sum to Hemchund Kupoorchund on Nuthooram Sayukrun's behalf. But by a reference to the chopras of Nuthooram, it appears that the

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sum of Rs. 1,000 is there credited as having been received from Mohunlal Vurujlal; and another party, one Manchund, is introduced by name into the transaction, who had nothing to do with it, and no mention is made of the prosecutor; but there is nothing to prove that the prisoners had any hand in the omission of the prosecutor's name from the chopras of Nuthooram. The Court does not consider that the circumstances alluded to by the Assistant Session Judge, viz. the insertion of the words "Dolet Hureevulubh" in Mohunlal's books, and the hoondie given by prisoner No. 1 (Mokum) to Mohunlal are sufficient to prove that the prisoner No. 1 (Mokum) embezzled the abovementioned sum of Rs. 1,000, and is therefore acquitted of the offence. The Assistant Session Judge has sentenced prisoner No. 1 to five years' imprisonment with hard labour, but as this Court has acquitted the prisoner No. 1 (Mokum) of one of the charges, viz. of having embezzled the item of Rs. 1,000, the sentence is mitigated, and prisoner No. 1 (Mokum) sentenced to be imprisoned and kept to hard labour for three years. The period of imprisonment awarded to prisoner No. 2 (Hureevulubh) is confirmed.

As the amount which is proved to have been embezzled does not exceed Rs. 3,300, the Court mitigates the fines imposed on prisoners Mokum and Hureevulubh, and orders each of them to pay Rs. 1,500, instead of Rs. 2,000, to be recovered in the manner directed by the Assistant Session Judge, and the whole or any portion that may be recovered to be paid to prosecutor as compensation for the loss he has sustained.

Resolution of the Sudder Foujdaree Adawlut.—As regards Case No. 41, the Court find that, in the year Sumvut 1909, the complainant (Wadilal) granted five hoondies, to the amount of Rs. 6,500, to Veerchund Sobhag, which sum was, of course, due to him by Veerchund. He, in part payment of this sum, gave him a credit

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to the amount of Rs. 1,145 in Jumna Heerachund's books. Of this sum, Jumna Heerachund paid in to complainant Rs. 350, and credited the remainder, some Rs. 800, to the account of the prisoner Mokum. Of this sum, Rs. 450 is at complainant's credit at one Kusulchund's, and is entered in complainant's nond, in prisoner Hureevulubh's handwriting, as received from Jumna Heerachund. This left a balance of Rs. 350, in settlement of which an entry of Rs. 350 was made in the nond, in Hureevulubh's handwriting, as credited to Jumna Heerachund and debited to Mohunlal Jetha, the same being entered in the ankra wuhee in the handwriting of Mokum (prisoner No. 1); but there is no corresponding entry in Jumna Heerachund's books, and no such item to complainant's credit in those of Mohunlal Jetha. This sum, therefore, has evidently been made away with to the injury of complainant, and to the prisoner Mokum's benefit, and was appropriated by the prisoner; and the Court see no reason for interference in this case as regards him; though, as regards Hureevulubh, who has been convicted of making false entries, the Court, for reasons which will be given below, acquit him.

In the second case the prisoners are charged with having, between April and October 1854, made sundry fraudulent and false entries in their master's accounts, and embezzled the sum of Rs. 8,627. This is divided into several instances.

In the first instance, it appears clear that Hureevulubh embezzled Rs. 1,000 out of the item of Rs. 1,270 from Nuthooram Sayukrun, he having received from that firm Rs. 1,000 cash, which he did not bring properly to account in Mungul Raidas's books.

The prisoner Mokum is also convicted, under Section XVII. of Act XIII. of 1850, because the item Rs. 1,270 in Raeechunda's ankra wuhee is shown to be in his handwriting. But this the Court do not consider sufficient

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to prove the charge. There is a true entry of Rs. 270, and the only fraudulent part of it is a 1 having been entered in the thousands' place, because the rest of the item is in Mokum's handwriting. That alteration, so trifling in execution, might have been made by any one—by Hureevulubh himself; and the Court do not think the proof sufficient to establish the charge against Mokum. Moreover, the Court do not think that Section XVII. is applicable to entries made systematically in accounts with a view to conceal embezzlements; such entries are part and parcel of the embezzlement. The Section, in the Court's opinion, applies to entries made with a view to adjusting accounts after a charge of felonious breach of trust has been brought, with a view to the defence, not to a man who has systematically kept false accounts in the course of his embezzlements, and whose embezzlements would be proved by those accounts; in a word, that this Section is intended to provide a punishment for those who are proved to have falsified accounts, but cannot be proved to have fraudulently applied, used, or disposed of any chattel, money, or valuable security for their own use or benefit in breach of the trust reposed in them.

In the second charge it is clearly proved that Mokum received Rs. 400, and that he has not brought it to account. This charge is, therefore, proved against him. But the entry being made in Hureevulubh's handwriting is not sufficient to convict him of having falsified accounts, and, being only a Goomashta, he is not answerable for entries made to conceal embezzlement by his superior, the Moonim, unless it is shown that he was actually a party to the embezzlement, which is not shown in this case.

On the third charge, of embezzling Rs. 1,000, there can be no doubt of both prisoners' guilt, as shown by the Assistant Session Judge in his finding.

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The Assistant Session Judge finds it clearly proved, on the fourth charge, that Rs. 2,000 more have been entered in Mungul Raidas's books than he has received credit for, and because he cannot trace it he considers the charge of embezzlement is not proved; but he convicts the prisoners of having falsified the accounts. The Assistant Session Judge and the Goomashtas he called in not being able to account for this item, and the prisoners not attempting to do so, would have sufficed to have convicted them of the charge, and the Court think the Assistant Session Judge was wrong in acquitting them of embezzlement, as he was, for the reasons given above, in convicting them under Section XVII. The conviction on this head must be annulled.

The conviction of Hureevulubh on the fifth item, and of both prisoners on the sixth, under Section XVII., must be annulled, though the embezzlement in both cases appears clear to the Court. The accounts having been adjusted, these items must have been discovered and the mistake corrected, if the prisoners had not embezzled the money in the first instance, and an examination of the treasury would, as it actually did, show the deficiency and consequent embezzlement in the second; and the Assistant Session Judge might have convicted the prisoners in both these cases of embezzlement.

The Assistant Session Judge having acquitted the prisoners on the seventh charge, and also having acquitted Hureevulubh in Case No. 43, while the Session Judge has acquitted Mokum in that case, the Court will take no notice of them.

The Court being satisfied of the correctness of the conviction of Mokum in Case No. 41, and of the second, third, and fifth instances in Case No. 42, and of Hureevulubh in the first and third instances of Case No. 42, do not consider the mitigated sentences passed upon them by the Session Judge at all inadequate to the offences proved, and determine to reject their petitions.

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The prosecutor having his remedy under Section XVI. Act XIII. of 1850, the Court would not have awarded the fine to the prosecutor.

The Court cannot close the remarks without recording their approbation of Mr. Walter's proceedings in these cases. The Court has pointed out mistakes in them, but that will not detract from the praise that is due to Mr. Walter for the ability he has shown and pains he has taken with these cases, and the pains also which he must have taken, before he applied himself to the trial, to make himself acquainted with book-keeping. Mr. Walter may be satisfied that the time he devoted to this case has not been thrown away, for he will throughout his service derive benefit from having mastered, as he certainly has done, the difficulties of Sowcars' accounts.

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Present, WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, Puisne Judges.

[Case No. 41 of the Calendar of the Sholapore Sessions Court for 1856. Committed by the Second Assistant Magistrate, J. A. G. DUFF, on the 20th June 1856. Tried by the Session Judge, T. A. COMPTON, on the 12th, 15th, 16th, 17th, 18th, 24th, and 25th July, and 8th August 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Robbery by Night, accompanied with Force; and Receiving Property, knowing the same to have been Stolen.

Prisoners.—Nos. 1, Bapoo Rungnath, Malwee Brahmin, aged 25.
2, Pundurnath Junardhun, Malwee Brahmin, aged 30.
3, Danapa wulud Rewuna, Wanee, aged 35.
4, Nagapa wulud Satapa, Wanee, aged 35.

Charge.—Robbery by night, accompanied with force (Regulation XIV. of 1827, Section XXXVII. Clause

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3rd); in having, about midnight on Friday the 29th February 1856, (corresponding with Magh Wud 8th, Shuké 1777, Shukrawar,) in the village of Wairag, Talooka Barsee, in the Zillah of Sholapore, broken through the roof of the house of one Rungrao Ramchunder, the complainant, and stolen therefrom gold and silver ornaments, pearl ditto, clothes, coral, &c. &c., to the aggregate value of Rs. 2,607-4-0.

Also charged, under Clause 1st, Section XLI. Regulation XIV. of 1827, with receiving property, knowing the same to have been stolen; in having received, at various times since the robbery, different articles belonging to the complainant Rungrao Ramchunder, which they must have known had been stolen from him at the robbery above mentioned.

T. A. Compton, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoners Bapoo Rungnath, Pundurnath Junardhun, Danapa wulud Rewuna, and Nagapa wulud Satapa, are charged with robbery by night, accompanied with force, and with receiving property which they knew to have been stolen, and severally plead not guilty.

On the night of the 29th February 1856, the house of the complainant (Rungrao Ramchunder) was broken into, and property, consisting of gold and silver ornaments, pearls, clothes, &c., to the estimated value of Rs. 2,607, carried off, a great part of the same being the property of the complainant's sister, Doobaee.

From the evidence of the witnesses Apuna, Chumkya, and Suntma (Nos. 4, 5, and 18), it appears that on the evening of the robbery the prisoners Nos. 1, 2, 3, and 4 (Bapoo, Pundurnath, Danapa, and Nagapa), with their servants (the said Apuna and Chumkya), arrived at the village of Manegaum, about a mile from Wairag, and put up in the hut of the woman Suntma (witness No. 18); and Apuna and Chumkya assert that, having got up in the middle of the night, they discovered that the four pri-

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soners were missing; they add, that the four prisoners returned early in the morning (about 4 A. M.), woke them up, and told them to saddle the horses as quickly as possible: that they then all set out for Mahra at once, and when about four koss from Mahra, the prisoner No. 4 (Nagapa) turned and went back towards Barsee, all the others proceeding to Pundurpoor (where the prisoners reside). Three or four days afterwards the prisoner No. 1 (Bapoo) sent for one Tookaram Sonar, and gave him two or three silver plates to melt up, selling the silver when so disguised to one Naroba Naique for Rs. 75.

The woman Suntma corroborates the evidence of the witnesses Apuna and Chumkya in full, except that she states that when she returned home about 9 P. M., *five* out of her six visitors were absent; it was too dark, however, to admit of her seeing which of the six remained. She testifies to the return of the four prisoners an hour before daybreak; to the extreme hurry and anxiety to depart which they evinced, which made her ask them if they had been engaged in a robbery. She certifies to the fact that the robbery of the complainant's house took place on that night, and adds, that on the prisoners' return she heard one of them say he had lost his shoes, and another his bag and betelnut knife.

This witness is an old Zungum woman, who had no previous acquaintance with any of the prisoners, and there are no grounds for the supposition that she has any object to serve in accusing them falsely.

Nuthya and Shetya (witnesses Nos. 25 and 26), village watchmen of Wairag, prove that, on inspecting the complainant's house after the robbery, they found one shoe belonging to the thieves under the wall of the house, another about 100 'haths' off, and near the hole (in the roof) by which entrance had been effected, they found a bag containing a betelnut cutter, a chunam box, a housebreaking implement resembling a chisel, and other

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articles; and Apuna and Chumkya (witnesses Nos. 4 and 5) prove that the shoes belong to the prisoner No. 2 (Pundurnath), and the bag and its contents to the prisoner No. 3 (Danapa). Three or four days after the prisoners returned to Pundurpoor they set out for Toolzapoor, *viâ* Wairag, with their servants Apuna and Chumkya, and with two prostitutes named Vitaee and Sarza (witnesses Nos. 6 and 7), and two servants of Vitaee, named Rama and Nursingbhan (witnesses Nos. 8 and 27), and put up in the 'mut' of a Gosayen named Bharthee Bawa (witness No. 14), remaining there three or four days.

All these witnesses prove that on leaving Toolzapoor the prisoner No. 1 (Bapoo) gave the Gosayen a green and yellow chintz 'angrika,' which the complainant at once recognised to have been stolen from him at the robbery, having been placed in Aoobhaee's charge by the owner Anna Huree (witness No. 23), by whom, as well as by the witnesses Gopal and Gungadhur (Nos. 22 and 24), it is also identified.

On leaving Toolzapoor the prisoners proceeded by Wairag to Manegaum (the village where they were on the night of the robbery), and put up in a garden outside for the purpose of cooking their evening meal, when they were interrupted by the arrival of the complainant's brother and a Sepoy from Wairag, who took them into custody.

The Sepoy, however, by name Bundee Alee (witness No. 36), allowed them to finish their meal, and Apuna, Chumkya, Rama, and Nursingbhan (witnesses Nos. 4, 5, 18, and 27) all affirm that they saw the prisoner No. 3 (Danapa) take an angrika and a shawl and burn them in the cooking-place; and they also depose that the prisoner No. 1 (Bapoo) gave Chumkya a silver saucer, and told him to throw it into a well. Bapoo Khan, Sepoy, (witness No. 12) subsequently dived for and recovered

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the silver saucer, and it is proved to be the property of the complainant.

Apuna and Chumkya further depose that they heard the prisoners Nos. 1 and 3 (Bapoo and Danapa) quarrelling about their respective shares of the property, and that, on the morning after the robbery, when they and the prisoners left Manegaum in the dark in such haste, the prisoners did not allow them to put the *saddle-bags* on the horses as usual; they are, therefore, unable to state whether they had more property with them than when they arrived at the 'mut' on the previous night.

These witnesses also affirm that Vitoba's temple (at Wairag), in which the prisoners lodged for some days before the robbery, is close to the complainant's house: this certainly strengthens the case against the prisoners, though not to any great degree.

Vitaee Kusbin (witness No. 6), who is the kept mistress of the prisoner No. 1 (Bapoo), deposes that in the garden at Manegaum, after they were apprehended, the prisoner No. 1 (Bapoo) gave her a box containing a pearl necklace and a silver drop for a 'sooparee' plate, and that when he was released on bail he took back these ornaments from her and went outside the village, ostensibly to obey the calls of nature, but that she followed him, and saw him bury these articles in a spot where they were afterwards pointed out by her to the Police.

It is by no means certain that these articles were not buried there by Vitaee herself, but they are proved to be the complainant's property, and must have been obtained from the prisoner No. 1 (Bapoo).

This witness and Sarza Kusbin (witness No. 7) both depose to having seen the silver and broken sooparee dishes melted up in the house of prisoner No. 1 (Bapoo) by Tookaram Sonar (witness No. 33), whom prisoner No. 1 (Bapoo) has somewhat unaccountably summoned in his defence, as he proves the melting of the ornaments.

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Sarza also affirms that prisoner No. 1 (Bapoo) having sent for Narayen Shroff, the prisoners Nos. 1, 2, and 3 (Bapoo, Pundurnath, and Danapa), Vitaee Kusbin, and Narayen went into a room and locked the door. Rama (witness No. 8), Vitaee's servant, deposes that prisoner No. 1 (Bapoo) gave him a silver bangle, telling him to say it was his own, if questioned by the Authorities; and he adds that he found in the pocket of Nursingbhan's (witness No. 27) angrika two silver boxes ('taeets') and a 'goongroo,' which prisoner No. 1 (Bapoo) took away from him.

Narayen Shroff (witness No. 9) proves the having purchased from prisoners Nos. 1 and 2 (Bapoo and Pundurnath), a gold ring, five gold venetians, and two bars of silver for Rs. 73-14-0, but he made *no entries of these in his accounts*; the gold and silver passed through different hands and have not been recovered, but the five venetians were produced by Apajee Kokuné, to whom they were sold by Narayen.

Gunoo Sonar (witness No. 10) bought 8¾ 'masas' of gold from prisoner No. 1 (Bapoo) for Rs. 10-9-0, and, as he states that prisoner No. 1 (Bapoo) told him he had only lately came out of jail, Gunoo must have known that he (prisoner No. 1, Bapoo) was offering stolen property for sale when he gave him gold at so cheap a rate.

The Court considers the charge of robbery conclusively established against all the prisoners.

Dada wulud Goondajee (witness No. 19), the Police Patel of Manegaum, proves, as well as the other witnesses, that the robbery of complainant's house took place on the night the prisoners put up in his village (which is only one mile from Wairag); that the prisoners called themselves "Karkoons from Sholapore"; that the complainant's son arrived early next morning, and asked him who had put up in the village on the previous night, as his

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father's house had been robbed; and this witness was also present when the silver saucer was brought up from the well and identified by the complainant.

It is established, by the evidence of the prisoners' servants, and by the Gosayen of Toolzapoor (witness No. 14), that the prisoners went about from village to village under assumed titles; prisoner No. 1 (Bapoo) calling himself sometimes the Foujdar of Pundurpoor, and sometimes the Mamlutdar of Sholapore, and being addressed as Rao Saheb by his companions. The Gosayen adds that he suspected they could not be respectable men, as, being Brahmins, Murathas, and Wanees, they all ate and slept together.

The accounts given by the prisoners of their reasons for visiting Wairag, and for travelling about in company from place to place, vary not a little from each other.

The prisoner No. 1 (Bapoo) states that he started from Toolzapoor with Apuna and Chumkya, and was joined outside Pundurpoor by the prisoners Nos. 2 and 3 (Pundurnath and Danapa), who were *also going to the Toolzapoor 'jutra'*; that they all went on to Mahra and put up for the night, then to Barsee, and thence to Wairag (a very roundabout way indeed from Pundurpoor to Toolzapoor), and that they waited two or three days at *Wairag* for Vitaee Kusbin, who did not join them till they got to Toolzapoor.

The prisoner No. 2 (Pundurnath) states that he left Pundurpoor to search for his cousin Namdeo, who had run off with Rs. 207 of his, and that they put up for the night at *Shaitphul*, and that, after proceeding to Barsee and Wairag, they started for *Purinda*. The prisoner No. 1 (Bapoo) asserted that he could not remember where he was on the night of the robbery; prisoner No. 2 (Pundurnath) declares that they were *all* at Pangaum.

It now becomes necessary to determine how far the

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stolen articles identified by the complainant and his witnesses have been found in their possession, or traced to them.

Narayen Anunt (witness No. 9) proves having received a gold ring, the five venetians, and two bars of silver from prisoner No. 1 (Bapoo); Gunoo Sonar proves that prisoner No. 1 (Bapoo) sold him 8¾ masas of gold; Ana Tookaram deposes that the same prisoner gave him a pair of child's earrings; the witness No. 14 proves having received from him (prisoner No. 1) the green and yellow angrika; and Tookaram Sonar (witness No. 33), his own witness, proves that he melted up for prisoner No. 1 (Bapoo) a broken 'tubuk,' or silver sooparee dish, resembling the one now in Court, and a gold ring weighing two masas. Tookaram's evidence is corroborated by Sheshoo (witness No. 36), his brother-in-law. Two gold taeets were found upon this prisoner when he was apprehended, but the complainant could not identify then as his.

In the house of Pundurnath (prisoner No. 2) was found a thin gold leaf stamped (an ornament for the head); and in the house of Moro Mookoond (witness No. 11), the cousin of the prisoner No. 2 (Pundurnath), a white silk 'dhotur' with a red border, and four silver toe ornaments were pledged by the latter to him (Moro).

Buried in the wall of the house of the prisoner No. 3 (Danapa) were found a smashed tubuk, or silver sooparee dish, satisfactorily identified by the number 51 which is on it, two or three pieces of gold, a string of gold beads, a gold nose ornament, a gold necklace, and two 'munees,' which are all identified by the complainant (except the nose ornament). The prisoner No. 3 (Danapa) denies having ever buried any of these ornaments, and does not assert that they are his; he alleges that it was he, and not prisoner No. 1 (Bapoo), who gave the

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green and yellow angrika to the Toolzapoor Gosayen, asserting that he purchased it from a travelling pedlar.

Four silver toe-rings, a silver anklet with box attached, two gold rings, and a silver idol, were found in the house of prisoner No. 4 (Nagapa), who admits that he has *no trade or occupation;* and Veerpaksh wulud Nagapa (witness No. 15) deposes that the prisoner No. 4 (Nagapa) came to his shop with some pieces of broken tubuk or sooparee dish, weighing Rs. 27, a gold 'tolbundee,' or armlet, weighing four tolas, and a piece of gold wire, and asked him to melt the silver and to make rings of the gold, upon which he made two gold rings and two silver bracelets, and he afterwards altered these same bracelets into toe-rings for the prisoner.

As this prisoner admits that he has no trade or calling, his possession of all these ornaments is of necessity a suspicious circumstance, and more especially when he is proved to have had them altered and disguised. It must be remembered, too, that shortly after the flight from Manegaum on the morning after the robbery, the prisoner No. 4 (Nagapa) did not proceed with the others to Pundurpoor, but turned back alone towards Barsee. It is not improbable, therefore, that a considerable portion of the stolen property was then entrusted to him.

None of the numerous witnesses summoned by the prisoners in their defence, either before the Second Assistant Magistrate or the Sessions Court, give evidence in their favour; and the Session Judge is unable to arrive at any other conclusion than that the four prisoners at the bar are the persons who committed the robbery in complainant's house.

There seems to be very little room to doubt that, had the Police Patel of Manegaum exerted himself as he should have done, and reported to the Mahulkuree of Wairag, when he heard of the robbery, that the four prisoners had been absent all night from the Zungum

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woman's mut, the prisoners might have been pursued and apprehended with the bulk of the stolen property upon them.

It is difficult to form any exact conclusion as to the probable value of the property stolen, as the complainant states that the only list of the ornaments, &c. which he possessed was in one of the boxes which was plundered and was stolen with the ornaments.

It may not be out of the place here to observe that a Vakeel of the Sholapore Adawlut and a Vakeel of the Magisterial Court have been convicted of a combination to defeat the course of public justice with regard to this case, having endeavoured to induce the witnesses Chumkya, Vitaee, and Rama to retract in the Sessions Court their depositions before the Superintendent of Police, and to assert that they had been forcibly extracted from them.

The prisoners Nos. 1, 2, 3, and 4 (Bapoo, Pundurnath, Danapa, and Nagapa) are convicted, on the evidence against them, of robbery by night, accompanied with force; in having, about midnight, on Friday, the 29th February 1856, (corresponding with Magh Wud 8th, Shuké 1777, Shukrawar,) in the village of Wairag, Talooka Barsee, in the Zillah of Sholapore, broken through the roof of the house of one Rungrao Ramchunder (the complainant), and stolen therefrom gold and silver and pearl ornaments, clothes, coral, &c., to the estimated value of Rs. 2,607-4-0.

* * * * * * * *

The prisoner No. 3 (Danapa wulud Rewuna) was convicted in the Sholapore Sessions Court of robbery by night, accompanied with force, on the 4th February 1840, and sentenced to two years' imprisonment with hard labour, and the sentence was carried out in the Poona Jail; the original warrant was sent with the prisoner, and no copy is discoverable in the records, but there are other entries in English and Murathee to prove the conviction.

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After a mature consideration of the offence which the prisoners have committed, together with the nature of the punishment provided for the same by Clause 3rd, Section XXXVII. Regulation XIV. of 1827, the Court proceeds to pass the following sentence:—

That you, prisoners No. 1 (Bapoo Rungnath), No. 2 (Pundurnath Junardhun), and No. 4 (Nagapa wulud Satapa) be imprisoned, and kept to hard labour, for three (3) years each.

That you, prisoner No. 3 (Danapa wulud Rewuna), be imprisoned, and kept to hard labour, for four (4) years.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The conviction of robbery might, I think, stand. There is no doubt the prisoners were found in possession of stolen property; that prisoner Pundurnath's shoes were found in the house; that he and the others were at Manegaum on the night of the robbery, and left the place where they pretended to sleep for some hours during the night: and, taking the Session Judge's appreciation of the evidence, which I see no reason to doubt, I would reject the petition.

[The second paragraph of Mr. Frere's Minute forms the Resolution of the Court.]

Resolution of the Sudder Foujdaree Adawlut.—The petitions are rejected.

The Session Judge should not have allowed the complainant to put the leading question he did to Dada (witness No. 19) at page 45, regarding the marks on Bappoo's body. The question should have been, "Did you, when the prisoners were in custody, see any marks on Bappoo's body?" and, if the answer was in the affirmative, the next question should have been, what the marks were, or were like.

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POONA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Proclamation issued by the Magistrate of Poona, D. DAVIDSON, and referred by him to the Sudder Foujdaree Adawlut, on the 4th November 1856.]

Proclamation issued by a Magistrate.

Proclamation under Regulation XII. of 1827, *Section XIX.*—Whereas it appears that it is the practice with some Hindoos, in fulfilment of vows, to "swing by the hook," at Jejooree, or other temples or fairs, or at other appointed days, and in some few places to inflict wounds on their own persons by piercing their thighs and backs with swords; and as by so doing it happens that they injure their body, and sometimes fall from the hook and their limbs are broken, or even death is the result, thus destroying their own life, which is an improper action: and whereas to behold such a barbarous, cruel, ignorant custom is very repulsive and painful to the feelings of those who attend fairs: Taking this into consideration, Government has ordered inquiry to be made, and having ascertained that the enlightened portion of the community would be pleased to see the practice of swinging by the hook, or self-infliction of wounds by means of swords, put a stop to, an Order has been issued to prohibit the same. It is therefore enjoined, that all persons who swing by the hook, or such persons as render them assistance in so doing, are to put a stop to the same forthwith; and all Police Authorities are directed to prevent the occurrence of such practices, and report as necessary to higher Authorities.

Any person acting at variance with this Proclamation at fairs or appointed days, within or without a village, at temples or any other place, who shall swing by a hook, or wound his person with a sword, or cause the same to be done, or aid and abet in the same, shall be punished according to law. Be this known.

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Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—With reference to your letter to Government No. 1885, of 13th August last, and Government Circular No. 2974, of 29th idem, I have the honour to report, that after inquiry throughout the Zillah by the District Officers, there appears no reason to apprehend that any parties encouraging hook-swinging would receive the support of the people. The great majority of them are reported highly pleased at the prospect of the abolition of the practice, which only obtains amongst the most ignorant section of the Hindoo community.

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POONA.

Proclamation issued by a Magistrate.

Under these circumstances, I have issued a Proclamation, copy of which, together with an English translation, is annexed for record.

In it I have also prevented the thigh-piercing ceremony, which can scarcely be called a practice, as it is only occasionally performed at Jejooree and another place in the neighbourhood.

Resolution of the Sudder Foujdaree Adawlut.—To be recorded.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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SURAT.

[Petition of Shew Luxmee, Daughter of Prubhashunker, to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Surat, H. LIDDELL, on the 22nd October 1856, for Report.]

Magistrate's Order in a Case of Disputed Possession.

Petition of Shew Luxmee, Daughter of Prubhashunker, to the Sudder Foujdaree Adawlut.—[Praying that the order to make over petitioner's land to another party may be set aside, and the case referred to the Civil Court.]

Precept issued to the Magistrate by the Sudder Foujdaree Adawlut.—You are hereby requested to report

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Magistrate's Order in a Case of Disputed Possession.

upon the matter set forth in the accompanying petition, presented to this Court by Shew Luxmee, daughter of Prubhashunker, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Magistrate.—In returning this Precept duly executed, the Magistrate of Surat has the honour to report that the Kotwal of Surat reported, under date the 25th July 1856, to the following effect :—

On the 14th June 1856 Baee Gunga presented a petition, stating that a neighbour of hers, Vijiashunker Tapeshunker, attempted to insert a window and a door in the wall on the northern side of her house, which was being constructed, and requested the interference of the Police Department to prevent his doing so.

On inquiring into the above petition, the Kotwal found that a window had been inserted in the wall in question, and accordingly informed the petitioner that he was unable to interfere in the matter.

The aforesaid petitioner (Baee Gunga) presented a further petition, on the 17th June 1856, that the ground towards which Vijiashunker was about opening a door was in her possession, adding at the same time that the aforesaid Vijiashunker and Baee Shew Luxmee (who has now petitioned to the Sudder Court) intended to enter forcibly into the possession of the ground.

When the Kotwal instituted inquiries into the first petition, he found out that Baee Gunga (or one Doorgashunker on her part) was in possession of the ground above alluded to, and it was subsequent to these inquiries that Baee Shew Luxmee entered upon the possession of the ground.

Under these circumstances, on the 8th September

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1856, the Magistrate directed the Kotwal to eject Shew Luxmee from the possession of the ground, and direct her to seek redress by an action in the Civil Court.

In compliance with the abovementioned order the Kotwal reported, on the 12th September 1856, that he had ejected Baee Shew Luxmee from the possession, and placed Baee Gunga in charge of the ground, and had directed the parties to keep the peace.

The original Guzerathee petition presented by Baee Shew Luxmee to the Sudder Court is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The Court see no cause for interference, and reject the petition.

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AHMEDNUGGUR.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 10 of the Criminal Return of the Magistrate of Ahmednuggur for December 1855. Tried by the District Deputy Magistrate, WAMUNROW GUNESH, on the 7th and 8th December 1855. Confirmed by the Magistrate, C. E. F. TYTLER, on the 6th February 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Receiving a Bribe.

Prisoner.—Hurbajee Gunesh Deshpandey, Brahmin, aged 37.

Charge.—Receiving a bribe or present (Regulation XVI. Section XI. Clause 2nd, of 1827, and Regulation V. of 1833, Section 1.); in having, on the 27th March 1866, (corresponding with Chuitru Shood 9th, Shuké 1777,) at the town of Ankola, Talooka Ankola, in the Ahmednuggur Zillah, received from one Mohonajee wulud Pursojee, Patel of Moujé Kulus Boodrook, of the said Talooka, a present of Rs. 80, under a promise of procuring for him the office of Patel.

Prisoner pleads not guilty.

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Receiving a Bribe.

Wamunrow Gunesh, District Deputy Magistrate.

Finding and Sentence by the District Deputy Magistrate, confirmed by the Magistrate.—The complainant, with the view of obtaining the office of Patel, went to the prisoner, and told him that if he got it for him he would give him 11½ beegas of his field. Prisoner agrees to this, and gets the agreement written, as is proved by papers Nos. 2 to 8, and 28, but the purpose for which the field was given is carefully omitted in the agreement. This, however, is the artifice of the writer. Afterwards (paper No. 2) prisoner asked for a sum of Rs. 80, on the ground that the field alone was insufficient to ensure the office of Patel for the complainant, and accordingly complainant borrowed Rs. 80 from Ramsook, Marwardee, of Ankola (as proved by witnesses Nos. 5, 6, 7, 8, and 13, and papers Nos. 10, 14, and 15 to 19), and paid them to the prisoner (as proved by depositions Nos. 2, 3, and 4). The only difference relates to the date and hour of the day, but it is of no consequence, considering the long period that has elapsed. Prisoner asserts his *alibi* on the Ramnowmee day, and produces witnesses (Nos. 21 to 26) saying that the charge originates in animosity; but there is no evidence of this, while many of the witnesses adduced by him are his relations. The witness No. 20, in his deposition, deposes to his having seen the offer of Rs. 5 made to Gomajee for bearing false evidence against the prisoner, but such a transaction could not take place in the open street and within the hearing of others.

Prisoner says he was not at Ankola on the Ramnowmee day, and, to prove this, refers to a field-boundary inspection, return No. 30. It is dated 26th and 27th of March 1855. So it appears that the prisoner was on those dates either at Ankola or Kulus. If he was at the lattermentioned place, he would not have failed to visit the former (Ankola), which was only two koss from Kulus, on the Ramnowmee, a day esteemed one of the

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great holidays by the Brahmins. His being in the Joonere districts on the abovementioned dates is, therefore, out of the question.

All the circumstances set forth in the evidence lead to show that the prisoner at first got the field from the complainant, and then asked for money, which the complainant borrowed and paid to the prisoner; but he was obliged to return it to the complainant, owing to the nomination to the office of Patel being eventually made by the co-sharers. The money was repaid by the complainant to the lender, in whose books it was re-credited.

But prisoner, having a desire to appropriate the field to his own use, did not return the agreement to the complainant, but petitioned the Mamlutdar, asserting his right to the field, which brought the circumstance of the prisoner's receiving a bribe from the complainant to light, together with other matters connected with it.

Under all these circumstances the prisoner is convicted of the charge, and sentenced, agreeably to Regulation V. of 1833, Section I., and Regulation XVI. of 1827, Section XI., to pay a fine of three hundred (300) rupees, commutable to three (3) months' imprisonment, without hard labour.

Precept issued to the Magistrate by the Sudder Foujdaree Adawlut.—The Magistrate is to be requested to procure from the Collector and send up, with his report upon the subject, the petition and other proceedings referred to in the second paragraph of the petition, with regard to the piece of land belonging to Kulus Boodrook, lately cultivated by the inhabitants of Sungavi.

Return by the First Assistant Magistrate in Charge.—The First Assistant Magistrate in Charge has the honour to report as follows, on the subject of the accompanying petition:—

The petitioner was convicted of receiving a bribe from

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one Mohonajee wulud Pursojee, and sentenced to pay a fine of Rs. 300. His object, in the present petition, is to show that the occupancy of certain land (the transfer of the right to which is alleged to have constituted a portion of the bribe) was in his possession long before the occurrence of the alleged act of bribery, and was obtained by him in a perfectly legitimate manner. He further endeavours to show that it was on his attempting to enforce his just claims to this land that the charge of bribery was, through enmity, brought against him.

From the accompanying papers in the Revenue Department, it will be observed that the petitioner first made a petition on the 27th August 1855, praying to be confirmed in the occupancy of certain land which he claimed to hold under Mohonajee wulud Pursojee. In the inquiry that ensued the District Deputy Collector negatived his claim, owing to the serious discrepancies in the statements of the witnesses whom he had called to establish the fact of possession.

As the discrepancies alluded to are those that occurred between the evidence of the witnesses given in the revenue case now forwarded, and that given by the same parties in the criminal proceedings now before the Court, the Assistant Magistrate in Charge has no opportunity of offering an opinion as to the correctness of the Deputy's decision. He would, however, respectfully suggest that the date (27th August 1855) of the petition in the Revenue Department be compared with that on which the charge of bribery was brought against the petitioner. If it is shown to be of more recent date, then the Assistant Magistrate in Charge submits the presumption will be strong that the petitioner instituted proceedings in the Revenue Department with a view to stave off the criminal charge then pending against him. At all events, one of the principal allegations in the petition now reported on, viz. that the charge of bribery was brought

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W. E. Frere, Puisne Judge.

against the petitioner in revenge for his having attempted to establish his just rights, will be refuted.

The papers called for by the Court are herewith forwarded.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—Hurbajee Gunesh is charged with receiving a bribe; in having, in March 1855, received Rs. 80 from Mohonajee, under the promise of procuring him the office of Patel.

The evidence in the case goes to show, not only that the money was paid, but also, that because Hurbajee was unsuccessful, it was likewise returned. The evidence is, in my opinion, very weak, and incapable of being tested to the extent that evidence in cases of this kind ought to be.

There is another bargain with Hurbajee which is not mentioned as part of the bribe, though, from Mohonajee's evidence, it would appear to be so, and that is, that he let Hurbajee his field for five years as a bribe, but, that not being enough, Rs. 80 more were given. Hurbajee admits that he took the field, but denies that it was let as a bribe, and declares that there was a disputed boundary between Kulus Boodrook and Sungavi, and the people of the latter village got possession of the land; that Mohonajee, the Patel of Kulus, being anxious to get the land for his village, agreed, if Hurbajee, the Deshpandey, would use his influence with the villagers, so as to get the land transferred to Mohonajee's relation's name, to give him a quarter of the yield; but finding that that was unsatisfactory, he got him to make over by written agreement sufficient land instead; but Mohonajee not acting up to his agreement, which was dated the 21st March 1855, Hurbajee, on the 27th August, made a petition to the Mamlutdar on the subject, and that, he says, led to Mohonajee's charging him with bribery on the 10th September.

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I am not prepared to say that the agreement about the field was right, but petitioner is not charged with any default on that account. It certainly does appear to me, seeing what very unsubstantial evidence is brought to support the charge, very probable that the charge of bribery in receiving Rs. 80 was only brought against Hurbajee because he had made a petition for the field, and, even if the evidence was stronger than it is, I should have suspected it. As it is, I do not think it worthy of credit, and would annul the conviction and sentence.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—The prisoner Hurbajee, a Deshpandey, is accused of receiving a bribe of Rs. 80.

Complainant says that, being desirous of getting the office of the Revenue and Police Patel of Kulus, he first of all agreed to let the prisoner, who was to manage the matter for him, have his field for five years. The prisoner agreed, but subsequently said the field was not sufficient, and that he must have some money, on which the complainant borrowed Rs. 80 from Ramsook, Marwadee, on a bond, and gave it to the prisoner, in the presence of Gomajee, Patel of Kulus Khoord. After five or six days the prisoner returned the Rs. 80 to complainant, saying there was no chance of his obtaining the appointment. The complainant had not, however, received back the agreement about the field, and so he brought the matter to notice.

That the prisoner received the money as a bribe appears to me proved by the evidence of witness Godhajee, who saw the money given to prisoner in a bag, whilst he was speaking to one Yes Patel at prisoner's house, and by Yes Patel, who corroborates the evidence of Godhajee. Witnesses Gunno, Tookaram, and Bhow depose to the money having been borrowed by complainant for this purpose, and their evidence is corroborated by exhibits Nos. 9 and 10, documents which are proved by witnesses Nos. 11, 12, and 13. Under these circumstances, I

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Receiving a Bribe.

W. H. Harrison, Puisne Judge.

consider the payment and receipt of the bribe proved, and I would not interfere with the conviction.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

Minute by Mr. Harrison.—There are no cases in which more careful scrutiny of the evidence is required than in these charges of bribery, for which enmity is often the motive. In this instance I do not think that the testimony to the receipt of the bribe of Rs. 80 is to be relied on. I concur in Mr. Frere's view of the matter, and would annul the sentence.

Final Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the fine is to be returned.

Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

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TANNA.

Notice by a Magistrate.

[Notice issued by the Magistrate of Tanna, E. C. Jones, and referred by that Officer to the Sudder Foujdaree Adawlut, on the 4th November 1856.]

Notice under Regulation XII. of 1827, *Section XIX.*—Whereas it has been found expedient to preserve for drinking purposes the water of the small tank to the western side of the large tank in the town of Bandora, Talooka Salsette, in the Tanna Zillah: all persons are hereby prohibited from bathing and washing animals, clothes, or any other articles in it, and from defiling it in any way. The dyers who live near the said tank should take care not to allow the foul water to run into the tank. The use of the water of the tank for irrigation is also prohibited. Disobedience of this Injunction will be punished according to law.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward herewith a copy and translation of a Notice issued by me

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TANNA.

Notice by a Magistrate.

this day in the town of Bandora, Talooka Salsette, under Section XIX. Regulation XII. A. D. 1827, prohibiting dyers and others from dirtying the water of a small tank there.

Resolution of the Sudder Foujdaree Adawlut.—To be recorded.

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KHANDEISH.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Petition of Ramlal wulud Radha Kissun to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Khandeish, S. MANSFIELD, on the 15th October 1856, for Report.]

Security for Good Behaviour.

Petition of Ramlal wulud Radha Kissun to the Sudder Foujdaree Adawlut.—[Praying that the order of the Magistrate, requiring the petitioner to furnish security, might be set aside, he having been fully acquitted in the case which occasioned its being demanded.]

Precept issued to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Ramlal wulud Radha Kissun, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate begs to state that the petitioner was committed to take his trial before the Sessions for being concerned in a robbery in Malligaum, and though he was released, there is still very strong suspicion against him, and as he is a man of very bad character, the Superintendent of Police suggested to the Magistrate that he should be called on to furnish security. The Magistrate referred the case to the First Assistant

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Magistrate, but the petitioner left Malligaum before any measures could be taken.

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KHANDEISH.

Security for Good Behaviour.

The earlier execution of the foregoing Precept has been delayed by the non receipt, from the Superintendent of Police, of the papers and proceedings connected with the petitioner's case. The petition is returned.

Resolution of the Sudder Foujdaree Adawlut.—The Court will not interfere until the Magistrate's order has been carried out.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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SURAT.

[Case No. 10 of the Criminal Return of the Magistrate of Surat for September 1856. Tried by the Deputy Magistrate, W. M. KELLY, on the 10th September 1856. Confirmed by the Magistrate, H. LIDDELL, on the 24th September 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Prisoner.—Muncharam Nanalal, Vania, aged 72.

Calumnious, Threatening Expressions, of a nature tending to Provoke a Breach of the Peace.

Charge.—Calumnious, threatening expressions, of a nature tending to provoke a breach of the peace (Regulation XIV. of 1827, Section XXIX. Clause 2nd); in having, on 24th March 1856, (corresponding with Sumvut 1912, Falgoon Wud 3rd, Monday,) in the Foujdar's Kutcheree, and at his house, in the town of Randier, threatened and intimidated the Foujdar, Maniklal, to get him a handful of cotton from each bale the merchants bring to export, and that in case he did not, to make a libellous petition against him and ruin him.

Prisoner pleads not guilty.

* * * * * * * *

Extract from the Proceedings of the Deputy Magistrate.—The proceedings close here, and the Court enters upon the investigation of a complaint made by Maniklal Bapoobhaee, under date 21st August 1856, against

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the prisoner Muncharam Nanalal: in having, on or about the 26th July 1856, been told by Roopalal Dhunlal that Muncharam told him to tell me that I had better do something for him, "else I will do him harm"; and about twenty days ago Pranjeevun, a Karkoon of the Municipal Committee, told me that Muncharam had told him that as Maniklal did not allow him (the prisoner) to take the handfuls of cotton, he suffered a loss of Rs. 50, and if he (Maniklal) therefore gives me (prisoner) Rs. 30 he would not make any petition against him, otherwise he will continue doing so.

These calumnious and threatening expressions not being made in the presence of the prosecutor, as required by the charge under which the prisoner is brought to trial, but conveyed by a second party, the complaint is tried and entered separately, in order that the circumstances as they turn out may go towards strengthening or weakening the proof of the charge the prisoner is tried under.

W. M. Kelly, Deputy Magistrate.

Finding and Sentence by the Deputy Magistrate.—It is to be observed that the prisoner Muncharam had not only simply told the prosecutor that he would petition against him, but had intimidated him by threatening to make a libellous one; as well as demanded, under such intimidation, support from him, to keep him (the prisoner) from doing so, and used threatening, calumnious expressions to effect his purpose; which is substantiated from the corroboration of the evidence, as well as the prisoner's own acknowledgment of his having been to the Foujdar at Randier on the precise day, of his having been kept under guard from 9 till 4 o'clock on that day, and of his having been required to give security, as they prove to show that he committed himself there, and his detention was owing to the time required in taking down the depositions of the witnesses; and this is corroborated by its being seen to have been done on that very

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day. All of which, the Deputy Magistrate is of opinion, tend to prove yet further the charge against the prisoner, as the reason for which the prisoner would make it appear in his separate petition he had been detained at Randier has been disproved by his own witnesses before the Foujdar, the evidence of whom goes rather to prove that his detention was owing to the taking down of the depositions of the witnesses according to instructions the Foujdar received from the Superintendent of Police. Moreover, had he any real cause for complaint, he would not have delayed till the 24th April to make his petition, one month after the transaction. His statements made in this case, and that in his petition, are also contradictory: in the former he states he went to make his Salaam to the Foujdar, while in the latter he states the Foujdar called him to his house; and again, it is very unlikely that a sensible man like the late Foujdar of Randier would have detained and kept a man under restraint, particularly one of the stamp of the prisoner, for nothing, or upon untenable grounds. The above circumstances take away all doubt as to the correctness of the statement of the prosecutor, that the prisoner had once before also, viz. 30th August 1855, threatened and intimidated him on the same account; and again, the corroboration seen in the evidence as to his having conveyed intimidating messages tending to the same purpose on two occasions subsequently, add materially to strengthen the accusation against the prisoner, as none of the latter threats could have been conveyed had the former occurrence complained of been untrue. It is also to be observed that under the irritable provocation offered, it must be allowed that it is not every one who would have shown so much forbearance as the prosecutor has, in not allowing himself to be provoked to a breach of the peace, for the domineering, insulting, and threatening language he received from the prisoner both at his house and in the public

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Kutcheree. It is also seen from the Kotwal's report what a bad character the prisoner holds, and that he had been fined more than once for such malpractices; and I can from my long residence in Surat also bear testimony to the very great notoriety of this person's misdoings for many years back, and it is now seen that he has made it a regular system of livelihood, and in his long career much must have been the annoyance he gave, and many the characters he has stigmatised.

It is also known under how much restraint many an upright functionary labours to perform his duties fearlessly, from the dread of characters of this sort (as there are several others of his stamp, and well known too), and the anonymous and false petitions they so unscrupulously present with impunity (as the prisoner himself correctly states, that if nothing is effected by such, suspicion at least will rest on the individual against whom *they* are made), and the great grievance and annoyance *they* thereby experience. I can unhesitatingly state that I do not think there is one or two out of ten Mamlutdars and others who is entirely free from such restraint, for the fear they entertain from such evil-disposed persons, not because they would do anything wrong, but, in doing right, it be against the interests or wishes of this sort of characters, and thereby get false complaints and petitions made against themselves; and while the one would be chuckling from a consciousness of no harm happening to him, the upright and honest functionary, from the very idea of a petition having been sent in against him, from the inquiry he will have to undergo, from the trouble and perhaps difficulty of defending himself, and the uncertainty of its result, loses all his energy, and, under the anguish he feels, concludes that it would have been far better to have obviated it by yielding to and keeping in terms with such characters.

Thus, having duly considered all the evidence, the

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corrupt nature and evil tendency of the offence, and the great necessity for suppressing such vile resources, the Deputy Magistrate sentences the prisoner Muncharam Nanalal to three (3) months' ordinary imprisonment without labour. (Regulation XIV. of 1827, Section XXIX. Clause 2nd.)

H. Liddell, Magistrate.

Confirmation by the Magistrate.—The Magistrate confirms the conviction and sentence, but is of opinion that, the prisoner being of such bad character, it would have been more conducive to the public benefit if he had been charged under Section XXXV. Regulation XIV., "for conveying threats of injury of any nature," as laid down in that Section, as he then would have been liable to a more heavy punishment, which he most richly deserved.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—This petitioner has been convicted of abusive language, such as would be likely to lead to a breach of the peace; in having threatened the Foujdar of Randier, the complainant, if he did not procure for him certain perquisites, to get up a complaint against him, and ruin him. Taking the facts as proved, I do not think the Regulation quoted applies to such a case. It is not to be supposed that the Foujdar in his Kutcheree could have been likely to commit himself a breach of the peace on such a provocation. The prisoner is described by the Deputy Magistrate as a notorious scoundrel, and accusations from a person of such bad character would be little likely to injure any one, putting out of sight that he would have to swear to his accusation before it were inquired into, and thus risk the penalty of perjury. As the complainant himself says, so long as he acted uprightly he had nothing to fear; and I should be sorry to think with the Deputy Magistrate, that the Native Magistrates in general are so wanting in moral courage as to live in fear of evil-disposed persons, and that an

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example was needed in this case for their protection. If it were so, they must be very unfit for their positions, and for the protection of those for whose benefit they are put in office,—the large class not armed with authority, —and who must be therefore still more at the mercy of slanderers by profession. It is possible that the prisoner, under the circumstances of this case, might have been liable to fine for contempt, but the present conviction must be annulled. I would remark, with reference to the investigation of another case on hearsay which the Deputy Magistrate took up, to see if it strengthened the case under inquiry or otherwise, and in which he passed no decision, but records that it did materially strengthen it, that a charge must stand or fall by the evidence produced in support of it, and that he should not take up other proceedings, as in this case, and count on them as proof in the matter at issue.

R. Keays, Acting Puisne Judge.

Minute by Mr. Keays.—I concur with Mr. Harrison in so far that I do not consider that the calumniating expressions used by the prisoner to the Foujdar of Randier in his Kutcheree were calculated to create a breach of the peace, and, therefore, the Regulation does not apply, and the sentence should be annulled.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoner to be discharged.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges. 1856 November 26.

KONKUN.

[Case No. 77 of the Calendar of the Konkun Sessions Court for 1856. Committed by the Acting Deputy Magistrate, DADOBA PANDOORUNG, on the 8th September 1856. Tried by the Acting Assistant Session Judge, J. L. WARDEN, on the 10th and 12th September 1856. Reviewed by the Acting Session Judge on the 23rd September 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoners Bechur Jeyvut, Tejbae, Widow of Shamjee, and Teja Mohunjee.]

Prisoners.—No. 1, Bechur Jeyvut, Brahmin, aged 25. Conspiracy.

2, Gunga *alias* Jumna, Wife of Petamber, Lohana, aged 22.

3, Tejbae, Widow of Shamjee, Lohana, aged 40.

4, Runsord Gungjee, Lohana, aged 24.

5, Donga *alias* Dongurse, Lohana, aged 14.

6, Teja Mohunjee, Brahmin, aged 40.

Charge.—Conspiracy (Regulation XVII. of 1828, Section I.); in that, exact date and place not known, but some time in Ashad and Shrawun, Shuké 1778, (July and August 1856,) at Gorebunder, Talooka Salsette, Tanna Division, Zillah Konkun, and other places, they did combine, in conjunction with one other person not apprehended, to injure and impoverish Sewjee Dewjee and Hurdas Sewjee, inhabitants of Bombay; and in virtue of the said conspiracy, and under the pretence that they would marry the said Hurdas, who was blind, to a suitable person, did, on the 9th August 1856, (Shrawun Shood 8th, Shuké 1778,) at Gorebunder, Talooka Salsette, Zillah Konkun, cause a marriage ceremony ('pat') to be solemnised between the said Hurdas and Gunga (prisoner No. 2), the mistress of Bechur (prisoner No. 1), and did receive from the said Sewjee, the father of Hurdas,

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J. L. Warden, Acting Assistant Session Judge.

Rs. 300 cash, and ornaments to the value of Rs. 1,213, which were placed on the person of the bride, all of which they did make off with and appropriate.

Finding and Sentence by the Acting Assistant Session Judge.—The prisoners are charged with conspiracy, and plead not guilty. The evidence for the prosecution is, as usual in cases of conspiracy, entirely circumstantial. The striking similarity and agreement among the depositions of the witnesses for the prosecution, and the extraordinary dulness of comprehension displayed by some of them, especially Sewjee (witness No. 5) and Mooljee (witness No. 7), preclude the idea of their having invented all the circumstances of the story. It is to be observed that the lists of ornaments given by the different witnesses exactly agree with one another, though there seems to have been an immense number of ornaments. From this clear and credible evidence, then, it is shown that the priests urged the complainant and his father and relations to bring about a marriage between complainant and a certain woman, and to give to her relations about Rs. 1,000 worth of ornaments and Rs. 200 in cash, and to give to them (the priests) Rs. 100 in cash. It is also proved, for the prisoners admit it, that the ceremony of the pat, or remarriage, actually took place between complainant and a woman, and was performed by Teja (prisoner No. 6), and that Tejbae (prisoner No. 3) asked for and received from complainant Rs. 200. The woman, having been invested with the ornaments and married, was taken to Bombay, and on the road and at Bombay she was seen with the ornaments on her person. She was also recognised by one Cooverjee (witness No. 8) as the mistress of Bechur (prisoner No. 1), who she turns out to be, after having left complainant's house in the night, and carried away the ornaments which were placed upon her at the pat.

The defence made by the priests, Bechur (prisoner

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No. 1) and Teja (prisoner No. 6), amounts to nothing more than a simple denial of the charge, and a plea that one of the witnesses for the prosecution (Bhima) bears an enmity to Bechur. These priests are evidently the principal offenders.

The defence set up by Gunga is that she was induced by others to marry a man whom she did not know to be blind, by whom she was beaten and deprived of her wedding ornaments. In support of this, she states that she went to the Police Office to complain; but she did not complain to the Police until a warrant was already out against her, nor till another of the prisoners had been apprehended. In the absence of proof no credit can be given to her account of the matter.

Tejbae (prisoner No. 3) maintains that she knew nothing about any conspiracy for injuring complainant, and that she only did as she was told in bringing about the marriage; this, however, is partly contradicted by her own words to the Police Sepoys (witnesses Nos. 9 and 10), and is altogether opposed to the statements of those who were eye-witnesses to her conduct. She, moreover, is unable to substantiate her statement by proofs.

The prisoners Bechur (No. 1), Gunga (No. 2), Tejbae (No. 3), and Teja (No. 6), are convicted of conspiracy.

Bechur (prisoner No. 1) and Teja (prisoner No. 6) are sentenced, under Section II. Regulation XVII. of 1828, to imprisonment with hard labour for two (2) years, after which they shall pay five hundred (500) rupees each, or, in default, be imprisoned and kept to hard labour for three (3) years more, and on their release shall be forwarded to the Magistrate for precautionary measures. The fines, if paid, shall be given to the complainant, under Act XVI. of 1850. This sentence is subject to the confirmation of the Session Judge.

Gunga (prisoner No. 2) and Tejbae (prisoner No. 3) are sentenced, under the same Regulation, to be impri-

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soned, with hard labour, for two (2) years. On their release, these prisoners shall also be forwarded to the Magistrate for precautionary measures.

Prisoners Runsord (No. 4) and Donga (No. 5) do not seem to have taken any active part in the conspiracy; they are therefore acquitted and discharged.

H. P. St.G. Tucker, Acting Session Judge.

Review by the Sessions Court.—These prisoners have been convicted of conspiracy, and sentenced, No. 1 (Bechur) and No. 4 (Teja) to be imprisoned and kept to hard labour for the space of two years, and then to pay a fine of Rs. 500 or, in default, to be imprisoned and kept to hard labour for a further period of three years; and the prisoners No. 2 (Gunga) and No. 3 (Tejbae) to two years' imprisonment with hard labour; and it has been ordered that, at the expiration of these sentences, all the prisoners are to be forwarded to the Magistrate for precautionary measures.

[Read and recorded a petition from the prisoner No. 2 (Gunga), complaining of the sentence passed on her; also from the prisoner No. 1 (Bechur).]

If the witnesses for the prosecution are to be believed, the facts which are established by their evidence clearly prove the existence of a conspiracy, on the part of the four prisoners who have been convicted, to injure and impoverish the complainant. The fact of the marriage is admitted by all the prisoners, with the exception of No. 1 (Bechur), who professes to have no knowledge of the transaction, and the only part of the complainant's tale which is in any way suspicious is that which relates to the evasion of prisoner No. 2 (Gunga) with the ornaments. It seems, on the first view, improbable, if the witness No. 8 (Cooverjee) had stated to Hurdas his suspicions regarding the bride prior to the arrival of the wedding party at the bridegroom's residence, that the latter, on reaching home, should have taken no means to ascertain who she was, or adopted no precautions, but the ignorance and

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stupidity of the parties may account for their conduct in this respect; and as the statement of the prisoner Gunga regarding the occurrences of the night is evidently not true, for had it been so she would have been able to adduce proof of the outcry which she alleges she made, and of her violent ejection from the house, I am of opinion that the depositions of Sewjee and Hurdas are entitled to credit. The case is not so clear as it might have been, for more evidence should have been taken to prove the connection between the prisoners Nos. 1 and 2 (Bechur and Gunga), which is now only deposed to by the witness No. 8 (Cooverjee); and this witness should have been questioned more particularly regarding his knowledge of these persons. But I see no reason to interfere with the conviction and sentence, further than to annul that portion of the Assistant Session Judge's order which directs that, at the expiration of their respective terms of imprisonment, the prisoners be sent to the Magistrate for the adoption of precautionary measures, which do not appear to me to be necessary in this case.

The award of fine, if recovered, to the complainant, should have been made under Act IX. of 1838, not under Act XVI. of 1850, as the fine inflicted by the Acting Assistant Session Judge has not been adjudged in accordance with the terms of that Act.

Resolution of the Sudder Foujdaree Adawlut.—The petitioners in this case are convicted of conspiracy; in having, under pretence that they would marry Hurdas, who was blind, to a suitable person, caused pat to be solemnised between him and the prisoner Gunga, and for it received Rs. 300 cash, and Rs. 1,213 worth of ornaments, all of which they made off with.

The parts that they respectively took appear to have been that prisoners Bechur and Teja persuaded Sewjee and his blind son Hurdas to go from Bombay to Ghore-

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bunder for the marriage of the latter, and there, Tejbae saying that she was Gunga's mother, Hurdas was married by pat to Gunga, the wife of one Petamber, from whom she was living separate, and the kept mistress of Bechur; that Rs. 300 were paid as the expenses of the marriage to Bechur and Teja; and that, on the return of the marriage party to Bombay, Gunga decamped with Rs. 1,213 worth of jewels with which she was ornamented at the marriage.

The Assistant Session Judge and Session Judge consider the conspiracy proved, but they certainly have omitted to show it. It is stated in the case that Gunga's husband, Petamber, is still alive, but that would not necessarily prevent his wife from performing pat; it is shown that she was living separate from him; and it is asserted that she, a Lowanee (of the same caste as complainant), was the kept mistress of the prisoner Bechur, a Brahmin. The inference then is, that she must be divorced from Petamber, and if so, the marriage with Hurdas is legal, and Gunga is his wife, and the jewels she has taken her 'streedhun,' so that she has been guilty of no crime in taking them away; nor have the other prisoners, in aiding at her marriage with Hurdas, which, though perhaps not a desirable, is, for anything that appears in the case, a perfectly good and valid marriage. If Gunga is still Petamber's wife undivorced, and the marriage to Hurdas invalid, that should have been proved on the trial; but not having been so, the prisoners who have, as it is, kept within the bounds of the law, must be discharged. It is a very curious case, and one that, had the Court not seen that the Session Judge had himself overlooked the most important point in it, they would have said ought to have been tried by the Session Judge himself, and not by his Assistant.

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AHMEDNUGGUR.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Petition of Gungaram bin Keshow Sambarey to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Ahmednuggur, C. E. F. TYTLER, for Report, on the 20th August 1856.]

Suspicious and Bad Character.

[See pages 520 to 522, Vol. VI. for previous proceedings in this case.]

Return of the First Assistant Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The First Assistant Magistrate in Charge has the honour to report, that the amount of security demanded has been reduced from Rs. 500 to Rs. 250, and that the petitioner not being able to furnish the latter amount, has been re-committed to prison by the Superintendent of Police. The petitioner is, in the opinion of that Officer, so dangerous a character, that it would not be safe to allow him to be at large without some substantial guarantee for his good conduct.

Every search has been made for the petitioner's Sunud, but without success. It is, therefore, respectfully suggested that the registry of it be cancelled, and, on this being done, a Circular Order to that effect shall be issued to all the Revenue Courts in the Zillah.

The delay in answering this Precept has been occasioned by the search that was made for the missing Sunud.

Resolution of the Sudder Foujdaree Adawlut.—The Court think the security demanded is still excessive, and desire that petitioner be called upon to furnish two securities in Rs. 50 each, for the period of one year, or be imprisoned for that time.*

* The Magistrate reported on the 11th December that the man having furnished the required security he was set at large.

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DHARWAR.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Petition of Babajee Mahadeo to the Sudder Foujdaree Adawlut. Referred for Report to the Session Judge of Dharwar, A. W. JONES, on the 15th October 1856.]

Convict petitioning the Sudder Foujdaree Adawlut.

Petition of Babajee Mahadeo to the Sudder Foujdaree Adawlut.—[Praying for an order to the Session Judge of Dharwar to allow certain convicts, his relations, to petition the Court, he having refused to do so.]

Precept issued by the Sudder Foujdaree Adawlut to the Session Judge.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Babajee Mahadeo, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within *ten* days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—In return to the within Precept, the Session Judge has the honour to report that Babajee Mahadeo gave in two petitions, on the 11th and 12th June last, requesting that the signatures of Sukharam Mahadeo and Purushram Gopeenath might be taken to two 'mooktiarnamas,' and that these were procured for him and delivered, as appears by the Nazir's endorsement of the 27th June and 1st July.

With regard to this person's assertion that his petition, requesting he should be allowed to see and speak to Sukharam and Purushram, convicts in the Jail, and that their signatures should be obtained to 'vakeelutnamas,' was thrown back to him when presented, the Session Judge has no recollection of any such occurrence; but if he ever requested an interview with these convicts

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he certainly would have been refused it, as the Session Judge never allows any interviews with any convicts but those sentenced to transportation or death.

The Session Judge begs, however, to say, that these convicts were sentenced at the end of October 1855; that Esajee Punt wrote a letter to his friends, which was sent through the Magistrate of Poona on the 29th January 1856; and that, when the Session Judge visited the Jail on 10th February 1856, he ordered the petitions and vakeelutnamas of the convicts Purushram, Esajee, and Sukharam to be sent, as requested by them, through the Magistrate of Poona, and they were despatched on 20th February, and were sent for the purpose of appealing to the Sudder Foujdaree Adawlut.

Since then about six or seven letters were received from the persons connected with the case addressed to the convicts, some unpaid, and all without any money or tickets for payment of the return postage, and they were therefore left unanswered. In September, Esajee Punt made a petition of appeal to the Sudder Foujdaree Adawlut, through the Session Judge, and the papers and proceedings in his case have in consequence been called for, and were sent down on the 25th ultimo. A Murathee report is enclosed, and the original petition is returned.

Resolution of the Sudder Foujdaree Adawlut.—As it appears, from the Session Judge's report, that means of appeal are not denied to petitioner, the petition is rejected.

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Ahmednuggur.

Precautionary Measures.

Present, { William Henry Harrison, Robert Keays, } Puisne Judges.

[Petition of Trimbuk Sukharam to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Ahmednuggur, C. E. F. Tytler, on the 15th October 1856.]

Petition of Trimbuk Sukharam to the Sudder Foujdaree Adawlut.—[Praying that an order to attend at the Chowkee, because he could not furnish security, may be annulled.]

Precept issued to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Trimbuk Sukharam, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the First Assistant Magistrate in Charge to the Precept of the Sudder Foujdaree Adawlut.—The First Assistant Magistrate in Charge has the honour to report that the petitioner was on one occasion only apprehended on a charge of theft, and discharged for want of proof. It seems doubtful, too, whether the Assistant Superintendent of Police (who has not the full powers of a Magistrate) was authorised in applying the provisions of Regulation XII. of 1827, Section XXVII. Clause 2nd, to this case.

Under the above circumstances the First Assistant Magistrate begs respectfully to recommend that the petition be complied with, and the order cancelled. The Magistrate would have done so on his own authority, but the Officer in charge of the late Joint Magistracy of Nassick had previously rejected the petition, and it was considered doubtful whether the Magistrate had authority to annul the act of that Officer.

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Resolution of the Sudder Foujdaree Adawlut.—The Joint Magistrate's order is annulled.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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RUTNAGHERRY.

[Case No. 42 of the Calendar of the Konkun Sessions Court for 1856. Committed by the Third Assistant Magistrate of Rutnagherry, J. ELPHINSTON, on the 24th April 1856. Tried by the Acting Session Judge, H. P. ST.G. TUCKER, on the 9th, 10th, 12th, and 13th May, and 17th, 18th, and 20th September 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, for confirmation.]

Culpable Homicide.

Prisoners.—No. 1, Kanak bin Hurnak, Mhar, aged 22.
2, Sonak bin Hurnak, Mhar, aged 28.
3, Bhewnak bin Gunak Mhar, aged 50.
4, Raynak *alias* Rowjee bin Gunak, Mhar, aged 48.
5, Bhondia bin Harnak, Mhar, aged 26.

Extracts from the Proceedings of the Session Judge.—After looking carefully over the proceedings of the Assistant Magistrate, I can find nothing which shows that the prisoners Sonak (No. 2) and Bhondia (No. 5) actually participated in the killing of the deceased; I therefore now discharge them, and call them in as witnesses.

* * * * * * * *

As nothing that has already been elicited from the witnesses tends to criminate the prisoners Bhewnak and Raynak, and as I can discover no further evidence against them in the proceedings of commitment, I, at this stage, acquit and discharge them, and cause them to be called in as witnesses.

Before examining them, I carefully explain to them that they are now relieved from all liability on account of

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RUTNAGHERRY.

Culpable Homicide.

any acts of concealment that they may have committed, and admonish them to declare the whole truth.

* * * * * * *

Read and recorded a Precept from the Sudder Foujdaree Adawlut, No. 659, dated 16th July 1856, forwarding an extract from the proceedings of that Court on the same date, granting permission for the conclusion of this trial at Tanna.*

* *Extract from the Proceedings of the Acting Session Judge at Rutnagherry.*—As no inquiry has been made to ascertain the truth of the prisoner Kanak's statement regarding the death of the woman Venee at Bandora, the trial cannot be finished, and the case must be postponed till the next Sessions, to allow of its being completed.

There is no direct evidence of the death of Venee, although it is shown that she disappeared from the village on the night of 8th September and has not been seen since, and was supposed to have left with the prisoner, by whom she was pregnant, who disappeared at the same time, and never returned to his house till after his arrest in Bombay on a charge of murdering her.

In this Court, on the first day of the trial, the prisoner declared voluntarily "that he had killed Venee, but said that the killing was accidental; after an angry altercation with her, he had struck her some blows, which had deprived her of life." He made this statement deliberately, and when in full possession of his senses, and though he has since retracted it, and declared that Venee died at Bandora, yet his conduct since his arrest leaves little room for doubting that Venee is dead, and that he has caused her death either accidentally or wilfully.

Inasmuch, however, as persons have been known to have confessed to murders which have never been perpetrated, I deem it right, before coming to any decision on this case, to order that the prisoner be given over to the Magistrate, in order that he may be forwarded with a competent Police Officer to Bombay and Bandora, and there point out the house where he says the woman Venee died, and the spot where she was buried, and also the persons who he states saw her with him at both of the abovenamed towns.

The depositions of the persons pointed out by prisoner should be taken, and they should be held in readiness at the final trial, and as they are said to be residents at Bandora or Bombay, an application will be made to the Sudder Adawlut to allow of the case being transferred to Tanna and concluded there.

Letter from the Registrar of the Sudder Foujdaree Adawlut to the

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Charge.—The prisoner No. 1 (Kanak) with murder; in that he did, on or about the 8th day of September 1855, (corresponding with Mitee Shrawun Wud 12th, Shuké 1777,) at the village of Bhurnay, Turuf Khed, Talooka Severndroog, in the Rutnagherry Division of the Konkun Zillah, by blows with a stick, or in some other manner unknown, wilfully, and without justifiable or extenuating cause, deprive Venee, wife of Dewjee bin Pandnak, Mhar, of life.* (Regulation XIV. of 1827, Section XXVI. Clause 1st.)

Prisoners Sonak (No. 2), Bhewnak (No. 3), Raynak *alias* Rowjee (No. 4), and Bhondia (No. 5), with concealment of murder after the fact; in that they, being aware of the perpetration of the above murder of the woman

Acting Session Judge.—I have the honour, by direction of the Judges of the Sudder Foujdaree Adawlut, to acknowledge the receipt of your letter No. 706, dated the 2nd instant, forwarding an extract from your proceedings, and requesting sanction to the transfer, from the Rutnagherry to the Tanna Adawlut, of the case of Kanak bin Hurnak.

In reply, I am directed to inform you that unless the Court have the whole of your proceedings, so far as you have gone into the case, before them, they cannot decide whether it would be proper that the trial should be finished at Tanna, and the Judges for the same reason refrain from remarking upon your (they believe) unprecedented proceeding in sending a prisoner under trial out of your custody for any purpose but to have the charge on which he is tried amended.

Letter from the Acting Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—In accordance with the instructions of the Judges of the Sudder Foujdaree Adawlut, as conveyed in your letter No. 1409, of the 17th ultimo, I have the honour to forward, for submission to the Court, a copy of the whole of my proceedings in the case of Kanak bin Hurnak, Mhar, as far as it was gone through at the late Sessions held at Rutnagherry.

I beg to intimate that the prisoner Kanak has been taken to Bandora that he might point out where the deceased Venee was buried, and has now arrived at Tanna.

Precept issued to the Acting Session Judge.—The necessary permission may be granted to continue the trial at Tanna, and the Acting Session Judge is to be requested to report the result.

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H. P. St.G. Tucker, Acting Session Judge.

Venee by the prisoner Kanak, at the time and place above specified, did conceal the same, and give no information of the occurrence to the Police Authorities. (Regulation XIV. of 1827, Sections XXVI. and I. Clause 5th.)

The prisoners plead not guilty.

Finding and Sentence by the Sessions Court.—The prisoner Kanak bin Hurnak is placed at the bar.

This is a very peculiar case, as, irrespective of the prisoner's statements, there is no positive evidence of the death of Venee. The testimony of the witnesses for the prosecution, whose statements have been corroborated in nearly every particular by the depositions of the brothers and uncles of the prisoner, who were improperly committed for trial on a charge of concealment, and are worthy in my judgment of implicit credit, establishes that the prisoner and the woman Venee, who had been discarded by her own husband, intrigued together; *that* the woman had been pregnant, and that her *state had* been brought to the notice of the Foujdar of the village and the Police, and that she had been placed under a sort of surveillance to prevent her procuring abortion; that on the afternoon of 8th September 1855, she left her house, saying that she was going to the Foujdar to inform that Officer that the prisoner was the father of the child of which she was pregnant; that she did not go there, and was seen by witness No. 9 (Rama bin Sayajee Jowla) about sunset returning from the village in the direction of the Mhar Wada, and that shortly after she had passed two loud screams were heard from the direction in which she had proceeded; that she never went home, and as the prisoner disappeared at the same time, and they had once previously eloped, it was generally supposed they had gone off in company; that the prisoner never returned to the village till he was brought back by the Police six months afterwards in custody on the present charge; that, on 15th February 1856, the father

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of Venee—whose suspicions had been previously aroused by learning that his daughter was not with prisoner, and that the latter had visited his father-in-law in a neighbouring village, and had returned to Bombay without visiting his own village—discovered in the river a bundle in which were two human bones, and the remains of some wearing apparel and ornaments, the latter of which he, his wife, and son (witnesses Nos. 3, 6, and 8) all identify as the ornaments which Venee used to wear. The Police had no information of the disappearance of Venee till after the discovery of the bundle; steps were then taken to cause the arrest of the prisoner, and he was apprehended in Bombay. On being brought to Khed he confessed that he had killed Venee, and pointed out the place where he had done so. There seems no reason to suppose that improper means were made use of to induce this confession. Before the Assistant Magistrate he also at one time commenced to confess, but he subsequently retracted his admissions. On his arraignment in this Court, when asked if he was guilty, he at first said yes, but, on being further questioned, he denied his guilt, and a plea of not guilty was recorded. Subsequently, when asked if he wished to cross-examine the first witness (Gunnak bin Desnak), he stepped forward, and in the most deliberate manner declared that he had struck Venee in a passion, and had killed her unintentionally; and on hearing this his pleader threw up the case. On the following day, however, as the trial proceeded, he again retracted this confession, and declared that Venee had accompanied him to Bandora, and had died of fever and been buried there. He has since been sent to Bandora to point out the grave, but when he arrived there he could not do this, and he stated to the Police who accompanied him that he had not brought the woman to that place. Of the witnesses, also, whom he named as having seen Venee at Bandora, and as aware

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of her death, all who have been found deny that the prisoner was accompanied by any female when he visited Bandora, or that any such person as Venee died there. Now it is to be observed that the prisoner has throughout admitted that Venee is dead, and that she left Bhurnay with him. He has never once suggested that she is alive, nor has he been able to show what became of her. His last statement is that she died at Bandora. From his conduct throughout, I entertain not the slightest doubt, not only that she is dead, but that the prisoner was the cause of her death. No one but a madman would have acted as the prisoner has done had he not killed Venee. The length of time which this trial has continued has given me many favourable opportunities for watching the prisoner, and I have no hesitation in pronouncing that he is perfectly sane, and this being the case, I can come to no other conclusion than that *he has* deprived Venee of life. It is of course, under the circumstances, impossible to determine with precision whether the killing amounted to murder or culpable homicide, but as it is quite possible that the prisoner struck her in a moment of passion without intending to cause death, he is, in the absence of direct evidence of what occurred, entitled to have the most favourable construction put on his conduct. I accordingly convict him of culpable homicide. I am fully aware of the danger of convicting a person of homicide* when the body of the deceased person has not been found, and there has been no eye-witness to the act, but all rules will admit of exceptions, and in the present case the prisoner's conduct has been such as to exclude all reasonable doubt of his guilt. The Judges of the Sudder Adawlut, in their reply (No. 1409, dated 17th June) to my letter requesting that I might be allowed to conclude this trial (which commenced at Rutnagherry) at Tanna, have been pleased

* Vide Lord Hale's Pleas of the Crown.

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,to observe "that they refrain from remarking upon my (they believe) unprecedented proceeding in sending a prisoner under trial out of my custody for any purpose but to have the charge on which he is tried amended." On this I have only to remark, that though the Regulations do not make any special provision for a contingency like that which has occurred, and the course I have followed may have been without precedent, yet there is nothing in the Statute Law which prohibits a procedure of this nature, and it appears to me that the ends of justice could not have been attained without its adoption. The Assistant Magistrate had neglected to inquire into the truth of the prisoner's assertion in regard to Venee's death at Bandora, and it could have been no injury to the prisoner, had he been innocent, to have given him an opportunity of satisfactorily proving his innocence.

The prisoner Kanak bin Hurnak having been convicted of culpable homicide, I sentence him, subject to the confirmation of the Sudder Foujdaree Adawlut, to be imprisoned and kept to hard labour for the period of ten (10) years from this date. (Regulation XIV. Section XXVII. of 1827.)

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case the prisoner was charged with murder, and has been convicted of culpable homicide. The evidence againts him consists of his confession to the Police Amuldar, on apprehension, to the killing, which he also admitted on trial in the Sessions Court. The corroboration is found in the circumstances of the case as they stand in evidence on the record. It appears that the deceased Venee was pregnant by the prisoner, a fact which she made known contrary to his wishes, and that on the day on which she was last seen alive she went out for the purpose of making a communication on the subject to the Foujdar. She does not seem to have

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gone to that Official, however, and late in the evening the witness No. 9 met her, and soon after passing her heard the scream of a woman in distress from the direction of the Mhar Wada, towards which she had gone. To her parents, with whom she lived, it was reported the same evening that she had left the village with the prisoner, whose intimacy with her seems to have disarmed suspicion, until some months later, when he was seen in Bombay and at his own village without Venee. Foul play towards her was then suspected. Some bones, some pieces of cloth, and some trifling ornaments were produced as found tied in a bundle in the river at Bhurnay, and the latter are deposed to as having belonged to the missing woman. The Session Judge has not examined the Jurors or placed the Inquest Report on record, and there seems slender proof that the remains or the articles were those of Venee.

That Venee is dead there is, however, no reasonable ground to doubt. The prisoner has not denied it from the first. He has accounted for her death in two ways,—that he killed her at Bhurnay, and that she died of fever in his company at Bandora in Salsette. The last has been entirely disproved. The truth of the first is, I think, to be relied on. The Session Judge has found the prisoner guilty of culpable homicide, because it is possible he may have struck a fatal blow without intending to murder the woman. Even under the discretion, however, which the Bombay Code allows, homicide must be held to be murder unless extenuating circumstances are shown to exist, and I do not concur in the verdict. The sentence should be confirmed.

In this case all who might be supposed to know anything about the murder seem to have been committed for trial either as principals or accessaries, so that there were no witnesses left from whom the real facts of the murder might have been elicited in a satisfactory manner.

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R. Keays, Acting Puisne Judge.

As the event showed, the Session Judge had no chance, after discharging Kanak's relations, to get them to depose against him, while Kanak, after their release from all liability, withdrew his admission of guilt, before openly made.

Minute by Mr. Keays.—The only difficulty I can discover in this case is that the body has not been found; but looking at the evidence, which proves beyond a doubt that the deceased Venee and the prisoner Kanak carried on an illicit intercourse together, and that she became pregnant by him; that the prisoner and Venee left the village together, and that the latter has never since then been heard of; that the prisoner throughout the whole trial admitted that Venee is dead; that he has been entirely unable to establish the plea set up by him that he took her to Bandora where she died; I really can find no reason for disbelieving his confession which he made in open Court before the Session Judge at the commencement of the trial, or why it should not be received as evidence against him. Under this view of the case, I would confirm conviction and sentence.

I entirely concur with Mr. Harrison in his observations regarding the proceeding of the Session Judge in discharging the other prisoners from the bar during the course of the trial; and the subsequent proceedings, after the prisoner was brought to Tanna after he had fully confessed the offence before the Session Judge, appear to have been altogether uncalled for and irregular.

Resolution of the Sudder Foujdaree Adawlut.—The sentence is confirmed.

The Court do not consider that the Session Judge's proceedings were correct in discharging the prisoner's brothers and uncles who had been committed for trial with him. The brothers might have been liable for concealment notwithstanding their relationship, and the case should have been gone into instead of the circum-

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stances being assumed from the Magistrate's proceedings before discharging any of the accused, unless they were required as witnesses, when they should have been pardoned and their evidence taken according to law.

The Court also disapprove of the Session Judge's proceeding in entering on the defence and then reverting to the prosecution, which is opposed to a fundamental rule for the conduct of criminal trials, as laid down in Section XXXVIII. Regulation XIII. of 1827.

The postponement of the trial and transfer of the prisoner to the Magistrate, in order that he might be sent to a distance and have an opportunity of showing the truth of the story he set up, that the woman Venee died and was buried at Bandora, was likewise erroneous, and liable to particular objection. The prisoner having been committed for trial to the Sessions Court, it was not competent to the Session Judge to transfer him to another Authority, or dispose of him except in due course of law. It appears, by reference to the Committing Magistrate's proceedings, that the prisoner, after having pleaded guilty to the charge, subsequently set up the story of the woman having died at Bandora, to which he afterwards reverted in the Sessions Court, and that he had then, which was the proper time, the opportunity offered of calling witnesses to prove it. He could produce none. If, after this, the Session Judge, at the final trial, still considered it requisite to call for any witnesses the accused might name to prove this story, it was in his power to adjourn the proceedings and summon them. To send the prisoner himself out of his custody to this end was as unnecessary as it was manifestly improper. It is evident that Mr. Tucker's anxious desire to clear up all doubt led to the adoption of this step, which, however, was not, in the Court's opinion, called for by any peculiar circumstances in the case, and should not have been resorted to.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges. 1856 November 26.

KONKUN.

[Case No. 31 of the Calendar of the Konkun Sessions Court for 1856. Committed by the First Assistant Magistrate, W. B. BOSWELL, on the 29th April 1856. Tried by the Acting Session Judge, H. P. ST.G. TUCKER, on the 10th and 11th July, 9th and 27th August, and 6th and 20th September 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, for confirmation.]

Prisoner.—Ragho Namajee Tingla, Kolee, aged 38. Murder.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in that, on 2nd January 1845, (Mitee Margsheersh Shood 9th, Shuké 1766,) at the village of Dolkumb, Talooka Kolwan, Tanna Division of Zillah Konkun, he did, in company with Pudoo bin Bapoojee Nurmul and about twenty-nine other persons, make an attack on the lines of the Ghaut Police, in the said village, and kill Amrut Huree, Jemedar of the Ghaut Police, in command of the said party.

Prisoner pleads not guilty.

Finding and Sentence by the Sessions Court.—This case has been made difficult by the manner in which it has been placed before the Court. In a case of so much importance, great care should have been taken that all the available evidence was brought forward in the first instance, and it should not have been left to the Court to search for this evidence. H. P. St.G. Tucker, Acting Session Judge.

The prisoner is charged with being Ragho bin Namajee Tingla, a Kolee, and with having, on 2nd January 1845, in company with Pudoo bin Bapoojee Nurmul and about twenty-nine other persons, made an attack on the lines of the Ghaut Police at the village of Dolkumb, and killed Amrut Huree, a Jemedar of the Ghaut Police Corps, in command of the party stationed there.

The prisoner denies that he is Ragho bin Namajee Tingla, Kolee, and states himself to be a Muratha named

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Bapoo bin Namajee Nimbalkur, who was born at Dondee Putee, in the Ahmednuggur Zillah, and afterwards lived at Moujé Sanjee, of Jogee Amba, in the Nizam's Territories, and for the last ten or twelve years has resided in Khandeish.

The murder of the Jemedar at the time and place named in the charge has formed the subject of a previous trial in this Court, and an extract from the judgment, by which Pudoo Nurmul, the leader of the gang, was sentenced to death for this murder, has been recorded (Exhibit No. 3).

Two witnesses (No. 1, Witoo bin Chowjee, and No. 2, Bhewjee bin Hurjee), a Private and Havildar in the Tanna Police Corps, depose that they were in the lines at Dolkumb when the attack was made, and that Ragho bin Namajee Tingla formed one of the gang who made the attack, and that the prisoner at the bar is the said Ragho Tingla. These persons are of the same caste, and are connected by marriage with Ragho Tingla. Another witness (No. 4, Hurdo) deposes that he was detained by Pudoo Nurmul's gang for four days, and that the prisoner was then in it exercising a subordinate command, and that he was then called Ragho Tingla. Witness No. 5 (Ragho bin Dewjee, Bangra) whose wife contracted a secondary sort of marriage with Pudoo Nurmul, deposes that he was well acquainted with Ragho Tingla, who was the person who persuaded his wife to join Pudoo, and that the prisoner is that man; and both these witnesses (Nos. 4 and 5) depose to the prisoner having used threatening language towards them for giving evidence against him.

Witness No. 16 (Rama bin Soobanjee Moria), a Private in the Police Corps, who was six months with Pudoo Nurmul and Ragho Tingla when they were in the employ of Government as Detectives, previous to their breaking out into open depredation, distinctly identifies

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the prisoner as Ragho Tingla; and witness No. 18 (Rama bin Rajoo Wondoola), the Policeman who caused the prisoner's arrest, declares that he was well acquainted with Ragho Tingla, and that the prisoner is the man. Finally, witness No. 21 (Gungajee bin Bhorjee Bangria), who is deposed, by witnesses Nos. 1 and 2, to be nearly related to the prisoner's mother, positively declares that the prisoner is Ragho Tingla. This witness pretends that he only saw Ragho Tingla once, and denies the relationship, but from the manner in which his evidence was given, I believe this last assertion to be untrue, and that the witness has had recourse to it under the supposition that he might bring himself into trouble if he admitted himself to be a relation of so notorious an offender as Ragho Tingla. Other witnesses, who were acquainted with Ragho Tingla many years ago, say that he would now be about the same age as prisoner, but they cannot positively identify him.

It would seem that the prisoner was arrested in Khandeish in 1852, under suspicion that he was either a Bangria or a Tingla, and that he belonged to Ragoojee Bangria's or some of the other gangs of plunderers that in the years 1844 to 1846 infested the Konkun. He was sent both to Ahmednuggur and this Zillah, but was not positively identified. He was taken by the Police of Ahmednuggur to point out his Murathee relatives in that Zillah, and the witness No. 19 (Soobedar Ramsing Sutcheeram), who was then a Joint Police Officer in Talooka Ankolee, and superintended these inquiries, declares that the prisoner could not point out any one who acknowledged the relationship; and this part of the Subedar's statement is borne out by the reports of the witness to his immediate superior at the time (Exhibit No. 20).

The prisoner has never attempted at this trial to bring evidence to prove that he resided at the places named by him in the Ahmednuggur Zillah, or in the Nizam's

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Territory; he has only called witnesses to show that he has been in the employ of the Post Office Department in Khandeish for the last ten years. None of the witnesses summoned by him knew him before he became a Post-runner at Dhoolia, and his name is first entered in the books of that Office in the abstract for November 1846. This, of course, does not establish that the prisoner is not Ragho Tingla, and the failure of the prisoner to prove his residence out of the Konkun prior to or at the time of the murder materially strengthens the evidence for the prosecution.

If the witnesses above named, four of whom are Policemen, are to be believed, there is ample evidence that the prisoner is Ragho Tingla, and that Ragho Tingla was concerned in the murder of the Jemedar. No attempt has been made to controvert this last averment. If the evidence of these witnesses is rejected, it must be supposed that, without any cause for enmity, they have all been induced to bring a false charge against the prisoner with the hope of securing the reward of Rs. 200 which has been offered for Ragho Tingla's apprehension. I have carefully considered the case in this point of view, and see no reason to suspect that any such conspiracy has been entered into. After hearing the evidence of the persons above named, and the prisoner's defence, I feel no doubt that he is Ragho Tingla, Pudoo Nurmul's lieutenant, and that he was present and took part in the attack in which the Jemedar was killed. I therefore convict him of murder, as set forth in the charge on which he has been arraigned. Taking into consideration the fact that the principal offender in this crime has been executed, and that the offence itself was committed ten years ago, I am of opinion that a secondary punishment will meet the exigencies of the case; I therefore sentence the prisoner, Ragho bin Namajee Tingla, to be transported beyond seas for the term of his natural life. Subject to

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the confirmation of the Court of Sudder Foujdaree Adawlut. (Regulation XIV. of 1827, Section XXVI. Clause 4th.)

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* * * * * * *

Copy of this Judgment to be sent to the Magistrate on the final disposal of the case by the Sudder Court.

I may notice, for the information of the superior Court, a trifling circumstance which has served to confirm my conviction of the prisoner's guilt. At the first day of the trial the prisoner appeared with very long hair; he subsequently caused himself to be close shaved, removing his hair, beard, and mustachios, and so altered his appearance that, when first placed at the bar, I did not recognise him. He must have done this with the view of puzzling the witnesses; an innocent man would scarcely have had recourse to an expedient of this nature.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—The prisoner in this case is accused of being concerned in the murder of Amrut Huree, Jemedar of the Ghaut Police, in the year 1845, which was committed by a gang of plunderers that existed at that season under the leading of Pudoo Nurmul. He is sworn to have been present at the crime by two witnesses, one of whom, however, admits that two days after the occurrence he deposed that he only recognised one of the attacking party (Jakoo Lokunda). The defence is that the prisoner is not Ragho Tingla a Kolee at all, but Bapoo bin Namajee a Muratha. He has, it appears, had full opportunity afforded him of showing his identity with the latter individual, having been taken to the Ahmednuggur Zillah and inquiries made as to the relatives he had alleged to exist in the places pointed out. But the prisoner has not adduced a particle of evidence in support of his assumption of character, and the failure adds weight to the testimony against him, which goes to show, besides the direct testimony to his presence at the murder,

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that he was with the gang of plunderers by whom it was perpetrated.

I think there is sufficient evidence for the sentence to be confirmed.

(The last paragraph of the Minute forms the Resolution of the Court.)

R. Keays, Acting Puisne Judge.

Minute by Mr. Keays.—I am of opinion that there is ample evidence in this case to show that the prisoner is Ragho Tingla, and that he was present at the murder of the Jemedar Amrut at the village of Dolkumb. Had the prisoner not been Ragho Tingla, he would have had no difficulty in proving his statement that he was not present in Pudoo's gang, a fact which he has not attempted to controvert, and that he did join Pudoo's gang is proved by witness No. 4 (Hiroo), who deposes that he was detained by Pudoo's gang for several days, and the prisoner was then in it and holding a high position, and by that of the two witnesses who recognised him when the murder was committed. I would uphold the conviction, and confirm the sentence.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

The Session Judge is to be informed that no considerations of convenience will justify a departure from the procedure laid down in the Regulations for the conduct of criminal trials, and as Regulation XIII. of 1827, Section XXXVIII. declares that a prisoner shall be called on for his defence after the evidence for the prosecution is completed, it was irregular his taking the defence of the accused and calling his witnesses at the stage he did.

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Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

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RUTNAGHERRY.

[Case No. 8 of the Criminal Return of the Magistrate of Rutnagherry for July 1856. Tried by the Deputy Magistrate, J. TROTT, on the 9th July 1856. Confirmed by the First Assistant Magistrate, G. SCOTT, on the 14th July 1856; and reviewed on appeal by the First Assistant Magistrate, G. SCOTT, on the 28th July 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Embezzling, and Felonious Theft.

Prisoner.—Bapoo Hybutrow Rané, Muratha, aged 35.

Charge.—Embezzling, and felonious theft; in having, about 7 P. M. on the 19th January 1856, (Mitee Magh Shood 1st, Shuké 1776,) at Moujé Malwan, Turuf Mussooreh, Talooka Malwan, Zillah Rutnagherry, received from the prosecutor, Witojee bin Ladojee Goorum, the sum of Rs. 50, on pretence that the money was required to bribe the Mamlutdar of Malwan to pass a decision in favour of prosecutor and others in a certain case then pending before that Officer, and fraudulently appropriated the money in question. (Section XL. Regulation XIV. of 1827, and Section XIII. Act XIII. of 1850.)

Prisoner pleads not guilty.

J. Trott, Deputy Magistrate.

Finding and Sentence by the Deputy Magistrate.—The Sowcar (witness No. 9) shows that prosecutor and witness No. 5 had come to him for the money (Rs. 50), and they explained to him the purpose for which it was required. That the money was paid to prosecutor is proved by the entry in the Sowcar's accounts, an extract from which has been recorded in the case (exhibit No. 3). That this money had reached the prisoner's hand is proved by the evidence of witnesses Nos. 4 and 5. When the case went against prosecutor and his party, as shown by exhibit No. 10, it was witness No. 6 who informed the Mamlutdar that prisoner had fraudulently appro-

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priated the money, whereupon the Mamlutdar sent for prisoner and ordered him to refund the money. On one occasion witness No. 7 heard prosecutor demand the money, and prisoner promised to pay it back shortly. Witness No. 8 was also present in the Kutcheree and heard the Mamlutdar mention that prosecutor was defrauded of Rs. 50 by prisoner. Prisoner mentions that he has witnesses to prove that prosecutor was tampering with witness No. 4. This is extremely improbable; no one manufacturing evidence would do so in the presence of others. The Deputy Magistrate does not, in consequence, deem it expedient to summon these witnesses. Even laying aside the evidence of witness No. 4, there is sufficient other evidence on the part of the prosecution to support a conviction. The Deputy Magistrate accordingly finds the prisoner Bapoo Rané guilty of the charge set forth in the indictment at the head of these proceedings, and sentences him to pay a fine of one hundred (100) rupees, commutable, in default, to six (6) months' imprisonment with hard labour. (Section XL. Regulation XIV. of 1827, and Section XIII. Act XIII. of 1850.)

The prisoner appears to be no ordinary sort of rogue; he seems to be an adept in trickery; and it is no wonder that honest plain-dealing men, such as the prosecutor and the other relations appear to be, have fallen victims to his chicanery. The above heavy fine has therefore been imposed on him, not only to serve as a salutary warning to him, but also to admit of means for compensating the prosecutor for the loss sustained by him.

In event of the fine being paid, an amount of Rs. 50 to be paid to the prosecutor Witojee. (Section XIII. Regulation XII. of 1827.)

The above sentence is subject to the confirmation of the First Assistant Magistrate in Charge.

G. Scott, First Assistant Magistrate.

Confirmation by the First Assistant Magistrate.—The confirmation of the First Assistant Magistrate in Charge

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is only necessary in case the fine be not paid, and the commutation of imprisonment therefore have to be enforced. The Deputy Magistrate is requested to demand the fine from the prisoner, and, should it not be paid, to return the case for confirmation of the term of imprisonment.

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Embezzling, and Felonious Theft.

Review by the First Assistant Magistrate on Appeal.—The sentence confirmed. The late Mamlutdar's statement, with respect to its having been brought to his knowledge that the money had been taken by the prisoner for the purpose of bribing him, is among the papers of the case; it contains a denial of all knowledge of the matter, and this is just what might be expected of him. His decisions and conduct with respect to various cases and matters which came before him as Mamlutdar were so extraordinary, that it was considered that he must be either dishonest or utterly incapable; he was therefore reduced to a Karkoon, and afterwards allowed to take his pension.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case petitioner has been convicted of embezzling and felonious theft, under Act XIII. of 1850, and Regulation XIV. of 1827, Section XL., in receiving a bribe of Rs. 50 from the complainant, for the Mamlutdar of Malwan, to get a decision in his favour, which not obtaining, he asked for the bribe back again, and not getting it complained, and the petitioner has been fined Rs. 100, and his bribe has been restored to the complainant. The petitioner denies receipt of the money, and alleges enmity as the cause of the charge.

The evidence in support of the fact that petitioner received Rs. 50 from the complainant appears in itself very weak. The entry (exhibit No. 3) certainly does not show it, as the Deputy Magistrate sets forth, and of the two witnesses (Nos. 4 and 5) one is complainant's 'ryut,' and the other is, as alleged, his relative. He seems a party concerned. But, however this may be, I do not

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think that Act XIII. of 1850 was passed for the protection of parties to such a proceeding as this, and that neither its provisions nor those of the Regulation quoted apply. The conviction should therefore be set aside.

I am surprised at the First Assistant Magistrate in Charge confirming the Deputy Magistrate's proceedings in this case, awarding to a party, as compensation for loss, the amount they alleged to have been given to corrupt a public Officer.

R. Keays, Acting Puisne Judge.

Minute by Mr. Keays.—In this case the prisoner has been convicted of embezzlement and felonious theft, in having appropriated to his own purposes the sum of Rs. 50, which had been entrusted to him by the complainant to be applied to a corrupt purpose, viz. to be given as a bribe to the Mamlutdar of Malwan to induce him to pass a decision in favour of prosecutor.

That this money was so entrusted to the prisoner appears to me to be sufficiently proved, and I consider that Section VIII. of Act XIII. of 1850 meets the charge exactly. This Act has been framed for the punishment of evil doers as well as for the protection of those that do well, and I cannot concur with my brother Judge that, because the money was entrusted to the prisoner for an evil and corrupt purpose, he should be allowed to embezzle it with impunity.

I would uphold conviction and sentence.

I agree with Mr. Harrison that the award of the payment of part of the fine as compensation to complainant was objectionable and unnecessary.

Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

W. E. Frere, Puisne Judge.

Minute by Mr. Frere.—The prisoner in this case is accused of having received from Witojee Rs. 50, which he was to give as a bribe to the Mamlutdar of Malwan; that he neither gave it to the Mamlutdar nor returned it to Witojee.

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The offence then in my opinion is one of those contemplated in Section XI. Regulation XIV. of 1827:—"fraudulently removing or keeping from its owner property entrusted to his charge or disposal," without employing force or secrecy, which would constitute it robbery, and not one of those contemplated in Section VIII. Act XIII. of 1850, which requires that the property should be embezzled or fraudulently applied, used, or disposed of for the prisoner's own use or benefit, and renders it compulsory to produce proof that the prisoner converted the money to his own use, of which there is no evidence in this case. The prisoner, under the Regulation, must either prove that he paid it to the Mamlutdar, or, if he does not choose to prove that, he must bear the consequences. The Act would throw the *onus* on the prosecutor of proving how the money had been disposed of.

The Deputy Magistrate had no right, because he considered it extremely improbable that "any one manufacturing evidence would do so in the presence of others," to refuse to examine the prisoner's witnesses, and the prisoner not having had a fair trial, the sentence must, in my opinion, be annulled, though, if the evidence in the case was not controverted, I should agree with Mr. Keays in thinking the crime proved.

I would suggest to my brother Judges what I do not see noticed in either of their Minutes, that the Assistant Magistrate in Charge at Rutnagherry was wrong in not confirming the sentence in this case on the ground that confirmation is only required if the commutation of imprisonment is to be enforced. Section III. Regulation IV. A. D. 1830 says,—"All sentences above three months, passed by an Assistant, shall be first referred to the Magistrate for confirmation." This was a sentence of six months, and certainly ought to have been confirmed.

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Final Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the fine is to be returned.

The Magistrate is be informed that his First Assistant in Charge was in error in supposing that the sentence as it stood did not require confirmation, and that the Court are of opinion that this is not a case in which compensation should have been made to the complainant, even if the offence had been proved.

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TANNA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case of Nanjee Huredas, tried by the Assistant Magistrate of Tanna, R. W. HUNTER, on the 3rd June 1856. Confirmed by the Magistrate, E. C. JONES, on the 5th June 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Receiving Stolen Property, having evident grounds for supposing it to be Stolen.

Prisoner.—Nanjee Huredas Batia, aged 23.

Charge.—Receiving stolen property, having evident grounds for supposing it to be stolen, without immediately giving information thereof to some public Officer (Regulation XIV. of 1827, Section XLI. Clause 1st); in that, on or about the 1st May 1856, (Chuitru Wud 12th, Shuké 1778,) at his warehouse in Moujé Hurelee, Talooka Salsette, Zillah Tanna, about twelve maunds of cotton, valued altogether at Rs. 36, were found in his possession, which he knew to be stolen property, and yet did not inform the Police Authorities thereof.

Prisoner pleads not guilty.

R. W. Hunter, Assistant Magistrate.

Finding and Sentence by the Assistant Magistrate.—The cotton found in the warehouse at Hurelee is admitted by the prisoner Nanjee to belong to himself, and declared by him to be part of a quantity of cotton which had been brought by him from Bhewndy some time before,

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and which had not yet been taken back. All the witnesses agree in stating that the prisoner had hired them to convey some cotton from a 'hodee' into the warehouse at Hurelee at the commencement of the month of May. The prisoner has hired a warehouse at a small intermediate bunder, and admits that he had brought cotton there before.

From this it appears that the cotton which was found in the warehouse was deposited there lately by the orders of the prisoner, and the above circumstances, added to the fact that the prisoner cannot satisfactorily account for the cotton being found in the warehouse he had hired, and also that the hodee acknowledged by the prisoner to have been hired by himself was found at the time in question at the bunder, and its presence there has not been satisfactorily accounted for, all these circumstances afford the strongest grounds for suspecting that the property had been once stolen, and known to be so by the person who deposited it at the small bunder of Hurelee.

No one, however, has appeared to claim the cotton, nor has any actual proof been adduced to show that the cotton had been previously stolen. The prisoner is therefore discharged for want of proof.

It was considered unnecessary to call for the prisoner's witnesses, as they were not called upon to prove that the property had not been received as stolen property, but for the purpose of showing that the complainant had tampered with the witnesses for the prosecution, and it would have been just as easy for them to make up an invented story to suit the prisoner's purpose; and even were the fact true that the witnesses had been tampered with, the other circumstances mentioned above would still have remained to produce a strong suspicion against the prisoner.

The practice of stealing cotton and selling it to certain traders at a low rate, so as to profit both buyers and

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sellers, is, it appears, somewhat extensively and with impunity carried on in this part of the country. The unperceived manner in which it is stolen whilst in transit to Bombay, and the peculiar and frequent opportunities which are afforded for trading with stolen cotton, render it at all times a matter of the greatest difficulty to prove any charge of the present nature which may be brought against a real offender; in fact, it seems almost impossible, under the present system, to furnish sufficient proof of the actual crime of cotton-stealing. When, therefore, so strong a suspicion rests against any person as against the present prisoner, it is necessary to demand security from him; and as such a trade must be a very lucrative one, it is as necessary to demand security to a large amount, in order that it may be an effectual restraint on the present prisoner, and a caution to those who now trade in stolen cotton with impunity.

Accordingly, the prisoner is called upon to furnish security, to the amount of Rs. 1,000, that he will not commit the crime of robbery or of receiving stolen property, &c. for the space of three years, or, if he refuses to furnish a security (who, on forfeiture of the bond, must pay Rs. 1,000, or suffer one year's imprisonment), he, the prisoner, is to undergo imprisonment without labour for one year. (Regulation XIV. of 1827, Sections XXV. and XXVI. Clause 2nd.)

Confirmation by the Magistrate.—The imprisonment in failure of security should be of the same duration as the period for which the security is demanded. The prisoner ought therefore to have been ordered into confinement for three years, unless he furnished security before that time expired.

The Magistrate considers that there is quite enough on record to show that the prisoner is an object of public distrust, and therefore that the Assistant Magistrate was perfectly right in demanding security from him.

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but the period for which prisoner is to be bound over need not exceed one year.

The Assistant Magistrate's order is amended accordingly.

The appeal made by the prisoner is rejected.

Petition of Nanjee Huredas to the Sudder Foujdaree Adawlut.—[Praying that the order requiring him to furnish security in a sum of Rs. 1,000, on a mere suspicion of having purchased stolen property, may be set aside.]

Precept issued to the Magistrate by the Sudder Foujdaree Adawlut.—You are hereby requested to report upon the matter set forth in the accompanying petition presented to this Court by Nanjee Huredas, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Magistrate.—The Magistrate of Tanna has the honour to report, that on the complaint preferred by Mr. William Henry Macdonald, Inspector of Coast-guard Establishment, Customs Department, petitioner was arraigned before the supernumerary Third Assistant Magistrate, Mr. Hunter, on a charge of "receiving stolen property, having evident grounds for supposing it to be stolen, without immediately giving information thereof to some public Officer; in that, on or about the 1st May 1856, at his warehouse in Moujé Hurelee, in Salsette, about twelve maunds of cotton, valued altogether at Rs. 36, were found in his possession, which he knew to be stolen property, and yet he did not inform the Police Authorities thereof."

The case was tried by the Assistant Magistrate, Mr. Hunter, who discharged the prisoner for want of proof,

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and called upon him to furnish a security, as will be seen from the foregoing finding recorded by that Officer.

The petition which accompanied this Precept is returned.

Precept issued to the Magistrate by the Sudder Foujdaree Adawlut.—The Magistrate is to be requested to certify the papers and proceedings.

Return by the Magistrate.—The papers and proceedings in the case of Nanjee Huredas are certified to the Sudder Court, as requested.

Resolution of the Sudder Foujdaree Adawlut.—The petitioner was called upon to give security in Rs. 1,000 for one year, because some cotton was found in his possession in a godown at Hurelee bunder, which is suspected to have been stolen. The only grounds set forth for the suspicion are that the godown is at a small intermediate bunder; and the Assistant Magistrate states that there is no proof at all that the petitioner *stole* the cotton, or that it is stolen property. Under these circumstances the Court find that there are not grounds for calling for the security demanded, and the order is annulled.

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KAIRA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 97 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the Deputy Magistrate of Kaira, W. T. A. SPRY, on the 4th July 1856. Tried by the Session Judge, A. B. WARDEN, on the 26th and 28th July, and 23rd and 30th August 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Serious Assault.

Prisoner.—Tulsee Nurotum, Koonbee, aged 22.

Charge.—Wilful murder; in having, on or about Tuesday, June 24th 1856, (corresponding with Jésht Wud 6th, Sumvut 1912,) in the limits of Rudwanuj Village,

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Matur Talooka, Kaira Zillah, during the daytime, about 11 o'clock, assaulted Kunkoo, wife of Kaleedas Nurotum, aged about twenty years, with a bamboo, and caused such injury that she died about 2 A. M. on the 27th of June 1856, (corresponding with Jésht Wud 10th, Sumvut 1912,) in the Civil Hospital at Kaira; prisoner thereby rendering himself amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827.

The prisoner pleads not guilty.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—From the evidence of the witness Dadabhaee (No. 2), it is ascertained that on going to the tank outside the village to wash his hands and feet, he found a crowd collected round a woman named Kunkoo, who was lying insensible near the edge of the tank with her feet in the water. On asking her what was the matter, she spoke with great difficulty, and said that Tulsee had beaten her with a stick; besides the woman's brother-in-law (the prisoner) there is no other person named Tulsee in the village. The evidence of the witness is corroborated by witnesses Nos. 3, 5, and 10 (Jeewabhaee, Rajlah, and Roopa), all of whom have deposed that the deceased Kunkoo said that Tulsee had beaten her. One of the abovementioned witnesses (No. 5) has further deposed that he saw the deceased come to the tank and then fall down; that some women who were washing clothes in the tank attempted to raise her up, but could not; they therefore asked him to assist in raising her up; he did so, but as she could not stand he laid her down again. From the evidence of the witnesses Nos. 6, 7, and 8 (Kala Jeewun, Bhaeejee, and Chandajee), it appears that they saw the prisoner beating the deceased with a stick; the former of these did not see the face of the deceased, but recognised her by her voice. The witness Chandajee has deposed that the witness No. 9 (Itcha Raijee) was sitting at the time in front of his own house,

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whereas the witness Itcha has deposed that he did not see the deceased struck, but saw her coming out of her house saying that she had been beaten by prisoner, who was lying on a cot at the time. In the evidence of the abovementioned witnesses there are discrepancies as to the manner in which the witnesses were employed at the time that the assault was committed, which, coupled with the important discrepancy between Chandajee and Itcha's statements, give rise to doubts regarding the truth of their assertions; but as the evidence of three witnesses proves distinctly that the deceased accused the prisoner by name, the fact of the prisoner being the person who committed the assault is established. The witnesses Bonjee and Jeeta (Nos. 12 and 13) deny that there were any bruises on the body of the deceased; but as one of them is the mother and the other a sister-in-law of the prisoner, they are not to be depended upon. The witnesses Nos. 19 and 20 (Raijee and Mhadowjee) have evidently been suborned to give false evidence, and instructed to throw themselves in the way of the Rawuneea, who was summoned to give evidence in the case, so that their names might be brought prominently before the Court. The evidence of the Civil Surgeon (No. 15*) proves that the

* *Deposition by the Civil Surgeon.*—I, Henry Wakefield, aged 27 years, Christian religion, Civil Surgeon of Kaira, depose on oath that I examined the corpse of a woman named Kunkoo, wife of Kaleedas Nurotum, who was admitted into the Civil Hospital at Kaira three or four days before her death. On making a *post-mortem* examination, I found a few bruises at the back of the neck and part of the back, but they were not anything serious. On opening the skull, I found a clot of blood situated in the upper and right lobe of the brain, and round this the brain itself was much softened, owing to the recent inflammation. I examined the other viscera throughout the body, and found them in an unhealthy state, and, judging from this, I should say the woman had exceedingly low vital powers.

Question.—Do you think that a blow or blows from either of the sticks before the Court would cause death?

Answer.—Persons have been beaten with sticks; but the ex-

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bruises on the body were produced by a beating with a stick or some blunt weapon. The deceased did not die till the

ternal injury in this case, in my opinion, was not the direct cause of death.

Question.—Was the skull fractured?

Answer.—Not in the least.

Question.—Do you consider that the death of the deceased was owing to the ill-treatment she had received?

Answer.—Her death might have been accelerated by the ill-treatment she received, but any sudden excitement might have produced the same effects that I observed in the brain.

Question.—Were there any bruises on the head, or was the skin at all injured?

Answer.—There was no abrasion of the skin, but there was a bruise extending from the back of the neck some little way up the back of the skull. You could not judge, from the situation of the clot of blood above alluded to, that it was in any way connected with the bruise. Judging from the state of the heart, and the state of the tissues of the blood-vessels, the deceased would at any time have been liable to a laceration of an artery from mental or bodily excitement.

Question.—To what do you attribute the bruises which were on the back of the neck and the back?

Answer.—The bruises could not have been caused by a fall; in my opinion the bruises were produced by a beating with a stick or any blunt weapon.

Question by Prisoner's Vakeel.—How do you account for the water or the saliva that was running out of her mouth?

Answer.—One side of her mouth was paralysed when she came into the hospital, and saliva was running out of her mouth. The clot of blood in the brain would produce paralysis, and so prevent her swallowing the saliva.

Question.—If a person has had fever for four months every other day, would he have sufficient strength to inflict blows that would produce death?

Answer.—It depends upon the kind of fever a man is suffering from. If he had typhoid fever, and lay in his bed for that length of time, and was much reduced, he would have some difficulty in causing death by such means, but not if he were suffering from ordinary fever. The prisoner, on being apprehended and put in Jail, was not admitted into the Hospital as a sick patient.

Question by Vakeel of Prisoner.—Were there any symptoms to lead you to suppose that the woman had been under water.

Answer.—No.

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third or fourth day after she fell down insensible near the tank. The question therefore arises, was her death caused by the beating which she received at the hands of the prisoner? From the evidence of the Civil Surgeon it appears that the external injury which the deceased had received was not the direct cause of death, and the Civil Surgeon was even unable to say for certain that death had been accelerated by the treatment she had received; all that he could say was that it might have been accelerated, for any sudden excitement might have produced the same effects that he observed in the brain. To substantiate a charge of murder, or culpable homicide, it must be clearly proved that if the blow or blows did not actually cause death, that death was accelerated thereby; but as that cannot be proved, the prisoner can only be convicted of serious assault: even if it could have been proved that the prisoner caused the *death* of the deceased, his crime would only have amounted to culpable homicide, for there is nothing to show that there was any intent to kill on the part of prisoner, not even a deadly weapon used. For the abovementioned reasons, the Court finds prisoner guilty of serious assault; in having, on or about Tuesday, June 24th 1856, (corresponding with Jésht Wud 6th, Sumvut 1912,) in the limits of Rudwanuj village, Matur Talooka, Kaira Zillah, during the daytime, assaulted Kunkoo, wife of Kaleedas Nurotum, with a stick, and caused her a great degree of bodily pain.

After taking into consideration the nature of the offence proved against you, prisoner Tulsee Nurotum, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXIX. Clause 1st, of 1827, the sentence of the Court is that you be imprisoned and kept to hard labour for two (2) years.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The Session Judge thinks the fact of prisoner

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being the person who assaulted Kunkoo is established, because the evidence of three witnesses proves distinctly that the deceased accused the prisoner by name. In other words, that the fact is established by hearsay, for it does not appear that Tulsee was present when Kunkoo mentioned his name; and if that were all the evidence of the assault, the prisoner ought to be acquitted. The Session Judge takes exception to the evidence of the witnesses Chandajee and Itcha Raijee, but there are two other witnesses to the assault, Kala Jeewun and Bhaeejee, to whose evidence he has taken no exception, and I am therefore satisfied that Tulsee did beat the deceased; and from Dr. Wakefield's evidence I gather that, being a person of exceedingly low vital powers, she died from the excitement resulting from the assault, and I am inclined to think a conviction of culpable homicide might have been sustained. However, the Session Judge has convicted him only of assault, and I see no cause for interference with the conviction.

The cause which led to the death of the deceased—her exceedingly low vital powers—might be allowed weight in awarding sentence. The assault upon any other woman in the village would probably have been hurtless, though unhappily fatal to the deceased. I think, then, that a more lenient sentence might have been awarded, proportioned more to the assault of which the petitioner has been convicted than to the unusual and unfortunate result of it.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—I consider that the charge of serious assault has been proved. There can be no doubt that the woman was beaten. This is clearly established from the Inquest Report and the evidence of the Civil Surgeon. It is in evidence that she herself mentioned the prisoner by name as the person who assaulted her, and I can discover no reason why she should have done so falsely. Three witnesses declare that they actually

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saw the prisoner beat the deceased, and, although there may be slight discrepancies as to minor facts, I do not think they vitiate their testimony as to the main point of having seen the prisoner beat the deceased. I think with Mr. Frere, however, that the sentence may be mitigated.

Resolution of the Sudder Foujdaree Adawlut.—The sentence is mitigated to one year's imprisonment with hard labour.

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AHMEDABAD.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 2 of the Criminal Return of the Magistrate of Ahmedabad for May 1856. Tried by the Third Assistant Magistrate, H. B. LINDSAY, on the 12th, 14th, and 30th April, and 1st and 2nd May 1856. Reviewed on appeal by the Magistrate, J. W. HADOW, on the 22nd April and 14th May 1856. Proceedings certified on the requisition of the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Fraud; and Appropriation of Property by Breach of Trust.

Prisoner.—Bapalal Govindram, Brahmin, aged 38.

Charge.—Fraud (Regulation XIV. of 1827, Section XL.); in that, one day between Sumvut 1911, Ashad Wud 7th, (1st November 1855 and 1st December 1855,) he being a servant of the Guzerat Vernacular Society, received from T. B. Curtis, Esq., Secretary to the said Society, the sum of Sicca Rs. 16, to be paid to one Motee Ambaram, Sootar, as the price of a cupboard made for the use of the Society by the said Motee Ambaram. This sum of money he did not pay as directed, but fraudulently appropriated it for his own benefit.

H. B. Lindsay, Third Assistant Magistrate.

Finding and Sentence by the Third Assistant Magistrate.—In this case the prisoner is charged with fraud, and pleads not guilty. It appears that Mr. Curtis, as Secretary to the Guzerat Vernacular Society, gave him, some time last November, Rs. 16, to be paid to one Motee Ambaram, for making a cupboard. The prisoner admits that he received the money, and states

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that he paid Rs. 9 of it to Ruliat Motee's mother, and some days afterwards he paid the remaining Rs. 7 to Motee himself, and having taken a receipt for the whole amount he sent it by the Peon Imam to Mr. Curtis. It is necessary to analyse carefully the evidence he adduces in support of his assertions. With regard to the Rs. 9, he states that he met Ruliat at the well near her house,—she *had gone to draw water;* and that seeing Narayen, Gopal, and Balgovind (witnesses Nos 6, 7, and 8) passing by, he *called them* to witness that he had paid the money. Ruliat denies this altogether. Narayen deposes that, as he was passing by, he saw the prisoner *go to Motee's house* and ask for him, when *Ruliat came* out, and, before the door, he gave her some rupees. He says that the prisoner did not speak to him at all. Gopal deposes that, seeing the prisoner near the well, he asked him why he had come there, and the prisoner replied that he was going to pay Ruliat Rs. 9, but he says nothing about being called as a witness of the transaction. Balgovind merely says that he saw the prisoner near the well, but he did not speak to him, nor did he see Ruliat there. Both the former witnesses deny that there was any appearance of Ruliat having come to the well to draw water. With regard to the seven rupees paid to Motee, Heera (witness No. 9) denies that he saw the prisoner pay it, but it must be remembered that he is Motee's relation. With regard to the other two witnesses, Oomeya Shunker and Vishwanath (Nos. 10 and 11), the evidence completely breaks down. The prisoner states that, seeing them sitting on the 'ota' of a house, he asked them where Motee was writing, and, on their directing him, he found Motee, paid him the money, and, returning with him past the place where these two witnesses were sitting, he told them that he had paid the money, and Motee acknowleged that he

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had received it. They, on the other hand, assert that they saw the prisoner pass them, and he told them that he was on his way to pay some money to Motee. They stayed there half an hour, and then went off to their villages and *did not see* the prisoner again. With regard to the receipt, and the two letters which the prisoner states he sent to Mr. Curtis by post from Dholka, we have the declaration of an English gentleman that he never received them. It is incredible to suppose that two letters sent by post, and one paper sent by special messenger, should all three be miscarried by accident, and it is equally incredible that Mr. Curtis should, as the prisoner asserts, have maliciously brought this charge against him, knowing it to be false. Taking into consideration the flagrant discrepancies noticed above, and looking upon the general features of the case, the Assistant Magistrate is of opinion that the prisoner has not proved the *payment* by him to Motee and Ruliat of the Rs. 16 *in question*, nor the delivery of the receipt to Mr. Curtis, and that therefore the charge of having fraudulently appropriated the said money is established against him. The prisoner's guilt is greatly enhanced from the fact of his having been in a superior and confidential situation; it was not as when a poor man is suddenly tempted by having in his charge a large sum of money. The smallness of the amount would rather lead to the suspicion that he has been in the practice of committing similar frauds. Under these circumstances, the prisoner is sentenced, under Regulation XIV. of 1827, Section XL. (subject to the confirmation of the Magistrate), to pay a fine of one hundred (100) rupees, or in default to undergo ordinary imprisonment for six (6) months. If the fine is realised, Rs. 16 to be paid to Motee Ambaram.

J. W. Hadow, Magistrate.

Review on Appeal by the Magistrate.—The charge should have been, "appropriation of property by breach

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of trust." Vide the marginal note to Section XL. Regulation XIV. of 1827.

The prisoner has appealed, and urges in his petition that he had other witnesses to prove the payment, *but he was not allowed to call them*. The Magistrate observes that the Assistant Magistrate has omitted to record that the prisoner, on being asked, stated that he had no further evidence to adduce. This omission should now be supplied, if the prisoner, on being asked, so replied. If the Assistant Magistrate omitted to put the question at the close of the proceedings, he should now call the prisoner before him, take any further evidence he may cite, and state his opinion of the weight that may be attached to it.

Amended Charge.—Appropriation of property by breach of trust (Act XIII. of 1850, Section 5th); in that, one day between Sumvut 1911, Ashad Wud 7th, (1st November 1855 and 1st December 1855,) he, being a servant of the Guzerat Vernacular Society, received from T. B. Curtis, Esq., Secretary to the said Society, the sum of Sicca Rs. 16, to be paid to one Motee Ambaram, Sootar, as the price of a cupboard made for the use of the Society by the said Motee Ambaram. This sum of money he did not pay as directed, but fraudulently appropriated it for his own benefit.

The prisoner pleaded not guilty.

Amended Finding and Sentence by the Third Assistant Magistrate.—In my former proceedings the prisoner was asked at the end of his statement if he had anything more to say?—to which he replied he had not; therefore his assertion that the Assistant Magistrate would not allow him to call his witnesses is utterly untrue, and the manner in which he now tries to explain the matter is simply absurd. He says that the Assistant Magistrate would not record a long rigmarole story he gave about Mr. Curtis having beaten him, which is true, for that had nothing to do with the question at issue, and that there-

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Fraud; and Appropriation of Property by Breach of Trust.

fore he concluded that there was no use in calling any more witnesses, and he admits that he said he had no more witnesses to call. The testimony of Jeyla Duleechund, who deposes regarding the money paid to Ruliat, makes Bapalal's case worse than it was before, inasmuch as it is to the full as discrepant as the depositions of the former witnesses. He says that Bapalal and Ruliat were standing fifteen or twenty paces from the well, and that no one else was present or near them, and that Bapalal came up to where he was sitting after Ruliat had gone away and simply said that he had paid Ruliat the money. Bapalal's statement must be borne in mind, that he called this witness and the others to witness his having paid the money. Regarding the evidence about the receipt, which Bapalal thought there was no use in mentioning before, witness No. 1 (Hureebhaee Luloobhaee), without any questioning, gave a rapid and singularly accurate account of a circumstance which occurred six months ago, *and which*, supposing that he really witnessed it, must have appeared to him most trivial at the time, and would hardly, I should think, remain in his or any other man's recollection twenty-four hours afterwards. That is to say, the fact of the receipt having been given might have been recalled to his recollection, because he says that about a month ago Motee came and begged him not to tell what he knew about it should he be called as a witness; but he must possess a remarkably good memory to be able to recollect all the circumstances attendant upon the transaction. He mentions one Nanabhaee Rujabhaee as having been present. This man appears to be a friend of his, and of the same caste, but he somehow could not remember just then where he lived; so the case had to be postponed, and *next day* Nanabhaee made his appearance, and with most surprising volubility gave an account, word for word, similar to that given by his friend Hureebhaee; once or twice he made a stumble, and I distinctly detect-

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ed the prisoner Bapalal making signs to him. It is certainly surprising that Bapalal should not at least have made an attempt to induce me to call these witnesses, who possess such accurate knowledge of what occurred. In short, I feel perfectly convinced that the evidence given by these men is utterly false, and concocted beforehand by them and Bapalal. I therefore consider that the charge of breach of trust is established against the prisoner, who is sentenced, under Act XIII. of 1850, to pay a fine of one hundred (100) rupees, or in default to undergo ordinary imprisonment for six (6) months. Subject to the confirmation of the Magistrate.

It may as well be mentioned that in the former trial Bapalal produced one English certificate and two Guzerathee papers, which he requested might be recorded. I took them from his hand, read them myself, and returned them, saying that there was no use in recording them. Now Bapalal produces these papers again, and also a 'yad' containing the names of the persons who can prove that Mr. Curtis beat him, and he declares that he produced this paper before. I can most positively assert that he did not produce this paper before. I only mention this as a significant circumstance, touching the preparation and instruction of witnesses. There was one other witness remaining, named Himutlal, but he cannot be found in Ahmedabad, and Bapalal, being informed of this verbally, does not wish that he should be sought for.

Review by the Magistrate.—The Magistrate, on a careful review of the proceedings in this case, is not of opinion that the evidence produced by the prisoner tends to refute or invalidate the evidence recorded on the part of the prosecution, which appears sufficient to support the conviction.

The conviction and sentence are therefore confirmed, and the prisoner to be informed accordingly.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoner is rejected.

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KHANDEISH.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Petition of Sudoo wulud Bhika to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Khandeish, S. MANSFIELD, for Report, on the 23rd October 1856.]

Failing to furnish Satisfactory Security.

Ram Naid, Deputy Magistrate.

Prisoner.—Sudoo wulud Bhika.

Charge.—Failing to furnish satisfactory security to the Authority demanding it.

Decision by the Deputy Magistrate.—It appears from the evidence recorded that the prisoner is a notoriously bad character; that he has made thieving a trade; and that he is such an adept at it, that he has hitherto baffled the vigilance of the Police and eluded justice, he having never yet met with punishment, though several times arrested and indicted for robbery. In the town and neighbourhood of Dhoolia he is looked upon as a scourge, and much dreaded as a wrong-doer. He is reputed to be the possessor of a large amount of ill-gotten wealth, though he ostensibly cultivates a few acres of Government land at Dhoolia. He has had ample time allowed him to find the securities demanded from him, and his inability to induce any respectable persons to guarantee his future good conduct only tends to support the stigma on his character. Such a dangerous and reckless character it would be unsafe to let loose on society, without a strong guarantee for his future good conduct. He is therefore ordered to be imprisoned in the criminal jail without labour for four (4) years, or until he does find the required securities within that period. This order being, as regards the first year, subject to the confirmation of the Magistrate, and, as regards the period in excess of one year, to that of the Court of Sudder Foujdaree Adawlut. (Regulation XII. of 1827, Section XXVII. Clause 1st.)

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KHANDEISH.

Failing to furnish Satisfactory Security.

S. Mansfield, Magistrate.

Review by the Magistrate.—The sentence of one year is confirmed, and the Deputy Magistrate will remind the Magistrate in sufficient time before it expires to admit of the confirmation of the Judges of the Sudder Foujdaree Adawlut being obtained for the remainder of the sentence.

Petition of Sudoo wulud Bhika.—[Praying that the sentence passed against him might be annulled.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition from Sudoo wulud Bhika, a prisoner in the Dhoolia Jail, which accompanied the Register of Petitions handed up by the Session Judge of Khandeish on the 6th instant, returning this Precept duly executed, or show good and sufficient reason why it has not been executed; with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return of the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate, in execution of the above Precept, begs to forward the English and Murathee proceedings of the Deputy Magistrate. The petitioner is one of the most notoriously bad characters in Khandeish, and has for years been the pest of the community of Dhoolia. The petition is returned as directed.

Resolution of the Sudder Foujdaree Adawlut.—The petitioner appears to have been often suspected, and the Court are willing to receive the Magistrate's report that he is a notoriously bad character, and they will not therefore interfere."

The Deputy Magistrate is to be directed to refer to prisoners by their names. It is very difficult in some of these cases to discover to whom he refers as prisoner No. 1 or No. 2.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

KHANDEISH.

[Petition of Sooproo wulud Ruhiman Khan to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Khandeish, S. MANSFIELD, on the 15th October 1856, for Report.]

Security for Good Conduct.

Petition of Sooproo wulud Ruhiman Khan to the Sudder Foujdaree Adawlut.—[Praying that an order to furnish security for Rs. 1,000 might be set aside.]

Precept issued to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Sooproo wulud Ruhiman Khan, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

S. Mansfield, Magistrate.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate begs to state that the petitioner was committed to take his trial before the Sessions for being concerned in a robbery in Malligaum, and though he was released, there is still very strong suspicion against him, and as he is a man of very bad character, the Superintendent of Police suggested to the Magistrate that he should be called on to furnish security. The Magistrate referred the case to the First Assistant Magistrate, but the petitioner left Malligaum before any measures could be taken.

The earlier execution of the foregoing Precept has been delayed by the non-receipt from the Superintendent of Police of the papers and proceedings connected with the petitioner's case. The petition is returned.

Resolution of the Sudder Foujdaree Adawlut.—The Court will not interfere until the Magistrate's order has been carried out.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges. 1856 November 26.

SHOLAPORE.

[Petition of Sirwuntapa wulud Eshwuntapa to the Sudder Foujdaree Adawlut. Referred for Report to the Session Judge of Sholapore, T. A. COMPTON, on the 11th September 1856.]

Bribery.

Petition of Sirwuntapa wulud Eshwuntapa to the Sudder Foujdaree Adawlut.—[Praying for an order to inquire into a charge of bribery he brought against the Moonsiff at Hipurga.]

Precept issued to the Session Judge.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Sirwuntapa wulud Eshwuntapa, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

T. A. Compton, Session Judge.

Return by the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The Session Judge has the honour to report, for the information of the Judges of the Sudder Foujdaree Adawlut, that when the petitioner brought forward his charge of bribery against Azum Venkutrow Jeevajee, Moonsiff of Hipurga, the only witness he could produce in support of his assertion was the Moonsiff's father-in-law, Kulianrow Deshpandé, who was not very likely to give evidence in his favour, and deposed that he had no acquaintance whatever with the petitioner, and knew nothing about the alleged bribe.

As the petitioner had no other proofs or witnesses to adduce, the complaint was dismissed as frivolous and vexatious.

The papers in the case are forwarded for the inspection of the Judges, and the petition is returned herewith.

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SHOLAPORE.

Bribery.

Precept issued to the Session Judge.—This and the former petition are to be returned to the Zillah Judge, and he is to be requested to send up any other petitions or proceedings he may have recorded in the matter of this application, and to report in greater detail on the former petition sent to him.

Return of the Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The Session Judge has the honour to report, with reference to the Court's Precept No. 590, dated 9th October 1856, that the two petitions presented by Sirwuntapa wulud Eshwuntapa are nothing but a tissue of malignant falsehood, most probably invented in revenge for Azum Venkutrow Jeevajee having thrown out a civil suit of his laying claim to some Inam land and 'poojaree huks,' &c.

Sirwuntapa alleges that the Session Judge has not sent up all the papers and proceedings in the case, but the assertion is false; and he complains that his petition of the 19th December 1855 was not forwarded, but the reason was that no such document was ever presented by him.

He asserts in his present petition that he never gave the name of Kulianrow Deshpandé as his witness to the payment of the bribe, but if the Judges will refer to his petition of the 6th December 1855, it will be seen that he there stated that the bribe was given by him to Kulianrow, or in his presence, for Venkutrow Jeevajee: this will suffice to show the degree of credit to be attached to his other assertions.

As regards the alleged relationship of the Sheristedar and the Nazir to Azum Venkutrow Jeevajee, it appears that the Sheristedar's sister was formerly married to Venkutrow's brother, but both husband and wife have been dead for many years, and the Nazir alleges that he is not in any way related to Venkutrow or to the Sheristedar.

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1856 November 26. — SHOLAPORE. — Bribery.

The petitioner states that he demanded that Venkutrow Jeevajee should be transferred to another district, and that he would then prove his charge, and that his request was not complied with; but it so happens that Venkutrow was removed to Barsee in the following month (January), though not in compliance with the petitioner's request.

All these petitions have been got up by Venaik Nursew Vakeel, in the hope of ruining the reputation of Venkutrow Jeevajee and the present Sheristedar and Nazir of the Court, he (Venaik Nursew) having been long at bitter feud with them, not only on his own account, but because he has always been in league and intimate friendship with the suspended Sheristedar (Nurhur Junardun).

The papers and petitions are returned herewith.

Resolution of the Sudder Foujdaree Adawlut.—Petitioner not being present for the third time, his petition is struck off.

1856 November 26. — KHANDEISH. — Security for Good Conduct.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Petition of Lalsing wulud Kesursing to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Khandeish, S. MANSFIELD, on the 15th October, for Report.]

Petition of Lalsing wulud Kesursing to the Sudder Foujdaree Adawlut.—[Praying that an Order to furnish security in Rs. 2,000 might be set aside, he being quite unable to furnish such security.]

Precept issued to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition presented to this Court by Lalsing wulud Kesursing, returning this Precept duly executed, or show good and sufficient reason why it has not been

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KHANDEISH.

Security for Good Conduct.

S. Mansfield, Magistrate.

executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

You are further desired to return the said petition with this Precept.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate begs to state that the petitioner was committed to take his trial before the Sessions for being concerned in a robbery in Malligaum, and though he was released, there is still very strong suspicion against him; and as he is a man of very bad character, the Superintendent of Police suggested to the Magistrate that he should be called on to furnish security. The Magistrate referred the case to the First Assistant Magistrate, but the petitioner left Malligaum before any measures could be taken. A free pardon was given to the petitioner in this case; but he is a notoriously bad character, has been imprisoned before for three years, and before this case occurred had been ordered by the Magistrate to sleep in the Chowree, and therefore precautionary measures against him are urgently required.

The earlier execution of the foregoing Precept has been delayed by the non-receipt from the Superintendent of Police of the papers and proceedings connected with the petitioner's case. The petition is returned.

Resolution of the Sudder Foujdaree Adawlut.—The petitioner having had a pardon, and being very likely now an object of suspicion to his old associates, the Court would recommend the Magistrate not to require security, unless he should have fresh grounds for suspicion against him; and they annul the order.

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CASES

DISPOSED OF BY THE

SUDDER FOUJDAREE ADAWLUT OF BOMBAY,

IN DECEMBER 1856.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges. 1856 December 3.

BELGAUM.

[Case No. 132 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the First Assistant Magistrate of Belgaum, W. H. HAVELOCK, on the 24th September 1856. Tried by the Session Judge, A. W. JONES, on the 24th October 1856. Proceedings submitted to the Sudder Foujdaree Adawlut, for confirmation.]

Prisoner.—Doorga, son of Somowa, Mang, aged 30. Murder.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, on the night of Saturday, the 13th September 1856, (corresponding with Bhadrupud Shood 14th, Shuké 1778,) at Hunmunhal, Mahal Ilkul, of the Hoongoond Talooka, in the Belgaum Division of the Dharwar Zillah, on finding his wife Kurowa and Timungowra bin Venkungowra in criminal intercourse in his house, inflicted wounds on them with a sword and knife; from which wounds his wife Kurowa then and there died, and Timungowra was seriously wounded.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder, and pleads guilty. A. W. Jones, Session Judge.

His statement is to the effect that he found a man named Timungowra, the son of the Patel of his village, in his

1856 December 3.

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Murder.

house with his wife, when he returned home at half-past 8 o'clock at night on the 13th September last, and that having heard before that there was an intrigue between them, he became so exasperated at this proof of it, that he at once attacked them both, killing his wife outright, and wounding the man so severely that he was not expected to live.

The prisoner admits this is true, and he is therefore convicted, on his own confession, of murder; in having, on the night of Saturday, the 13th September 1856, (corresponding with Bhadrupud Shood 14th, Shuké 1778,) at Hunmunhal, Mahal Ilkul, of the Hoongoond Talooka, in the Belgaum Division of the Dharwar Zillah, on finding his wife Kurowa and Timungowra bin Venkungowra in criminal intercourse in his own house, inflicted wounds on them with a sword and a knife, from which wounds his wife Kurowa then and there *died, and* Timungowra was seriously wounded.

And after considering the nature of the crime committed, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, the following sentence is passed :—

That you, Doorga, be transported across the seas for the term of your natural life. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case the prisoner has admitted that he killed his wife, and desperately wounded her paramour, on detecting them in the act of adultery. This confession must be taken as a whole, and there appears no reason to doubt the fact of the provocation as alleged. It was of a grievous nature, and, under the circumstances, I should record a conviction of culpable homicide.

Resolution of the Sudder Foujdaree Adawlut.—The prisoner is convicted of culpable homicide, and sentenced to one month's solitary confinement.

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Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

1856 December 3.

AHMEDNUGGUR.

[Petition of Bapoo wulud Rowjee to the Sudder Foujdaree Adawlut. Referred for Report to the Session Judge of Ahmednuggur, J. W. WOODCCOK, on the 13th November 1856.]

Robbery by Night, without Force.

Prisoner.—Bapoo wulud Rowjee.

Charge.—Robbery by night, without force.

F. S. Chapman, First Assistant Magistrate.

Sentence by the First Assistant Magistrate.—To be imprisoned for three (3) months with hard labour, and to receive twenty-five (25) lashes within five days from the date of his sentence.

Petition of Bapoo wulud Rowjee to the Sudder Foujdaree Adawlut.—[Praying that the sentence passed against him might be annulled.]

Precept issued to the Session Judge.—The petition is rejected.

The Session Judge is to be requested to report with regard to the petitioner's assertion that he is to be flogged in November, the sentence being that he be flogged before the 18th August.

Return by the Assistant Session Judge to the Precept of the Sudder Foujdaree Adawlut.—The extract has been duly received, and, in exigence thereof, the Assistant Session Jndge, in the absence of the Session Judge on circuit, begs to report that the convict Bapoo wulud Rowjee, having appealed to the Magistrate and subsequently to the Court of the Sudder Foujdaree Adawlut, the sentence of flogging was not carried out on the day appointed in the warrant. He was, however, flogged on the 12th instant, a day prior to his discharge from the Jail.

The prisoner having been released previous to the receipt of the Court's Precept, the petition could not be delivered to him as described.

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AHMEDNUGGUR.

Robbery by Night, without Force.

Resolution of the Sudder Foujdaree Adawlut.—The Session Judge is to be informed that he has no power to alter a sentence, which should be carried out in the terms of the warrant. In this case he should have carried out the sentence by having the corporal punishment inflicted before the 18th August as awarded, if he was not satisfied and prepared to take the responsibility of not inflicting it at all.

1856 December 3.

TANNA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Pusine Judges.

[Case No. 24 of the Criminal Return of the Magistrate of Tanna for September 1856. Tried by the Acting Deputy Magistrate, DADOBA PANDOORUNG, on the 9th September 1856. Confirmed by the Magistrate, E. C. JONES, on the 11th September 1856. Reviewed by the Acting Session Judge, H. P. ST.G. TUCKER, on the 20th October 1856. Proceedings certified, on the requisition of the Sudder Foujdaree Adawlut.]

Appropriation of Property by Breach of Trust.

Prisoner—Naro Vitul, Shenvi, aged 31.

Charge—Appropriation of property by breach of trust (Regulation XIV. of 1827, Section XL.); in having, on or about 2nd September 1856, (corresponding with Bhadrupud Shood 3rd, Shuké 1778,) in the village of Moujé Koorla, Talooka Salsette, Zillah Tanna, fraudulently appropriated for his own use Rs. 75 entrusted to him as a deposit by Govind Moreshwur.

Prisoner pleads not guilty.

Dadoba Pandoorung, Acting Deputy Magistrate.

Finding and Sentence by the Acting Deputy Magistrate.—The complainant is a respectable man, holding the situation of a Surveyor, under the Executive Engineer Lieutenant Fuller. He deposes, on solemn affirmation, that on the day and hour mentioned by him, he deposited Rs. 75 with prisoner, to be returned by him whenever complainant wanted them. Prisoner counted and received the money in the presence of wit-

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TANNA.

Appropriation of Property by Breach of Trust.

nesses Nos. 2 and 3, who not only deposed to this fact, but, when cross-examined, gave a detail of all the circumstances under which the money was entrusted to prisoner, as stated by the complainant himself; a circumstance which leaves no doubt on the mind of the Acting Deputy Magistrate as to the truth of the fact, to which the complainant has deposed. Prisoner denies having received the money, but adduces no proof in his defence. Under this consideration of the case, the Acting Deputy Magistrate has no hesitation to convict the prisoner.'

Prisoner is convicted and found guilty of the charge preferred against him, and sentenced to be imprisoned with hard labour for four (4) months, under Regulation XIV. Section XL. of 1827.

Also, further sentenced to pay a fine of fifty (50) rupees for the benefit of the complainant, under Act XVI. of 1850, Section I. This sentence is subject to the confirmation of the Magistrate.

E. C. Jones, Magistrate.

Confirmation by the Magistrate.—This is by no means a satisfactory case. The reason for depositing so much cash with a stranger, instead of keeping it himself, the prosecutor does not explain; he did not apparently go away to Shapoor, as he says he intended to do; it is not clear, why, if he was going away on Saturday the 6th instant, he should have thought necessary to deposit the cash with prisoner five days before, viz. Tuesday. These are matters that should have been cleared up before the Deputy Magistrate. On the other hand, the prosecutor and his principal witness are in a respectable rank of life, and not likely to bring a false accusation, without grounds either of ill-will or revenge of some sort, and as their statements are perfectly consistent, they are deserving of credit, in spite of the unexplained circumstances above noticed.

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TANNA.

Appropriation of Property by Breach of Trust.

The Deputy Magistrate has omitted to mention what was done with the cash found in the prisoner's house; and it was essential to have proof of the assertion of the brother-in-law, that the Rs. 31 found on him were his property, as he is a Peon in the Forest Department, on Rs. 9 per mensem, and not likely, from the Magistrate's recollection of his character at Alibaugh, to have so much ready money about him.

The Deputy Magistrate should always enter in the proceedings whether the fine under Act XVI. of 1850 was paid, and, if not, record the order given for the recovery of the amount.

The conviction and sentence are confirmed.

H. P. St.G. Tucker, Acting Session Judge.

Review by the Sessions Court on Appeal.—I am of opinion that this is a very unsatisfactory case; and if it be true, as the prisoner now states, that he was a teacher of the Christian religion, in the employ of Alfred *Lyon*, Esq., at Koorla, matters would bear a very *suspicious* appearance. I request that the Magistrate will cause inquiry to be made to ascertain what was the character of the school kept by the prisoner at Koorla, and let me know the result with the least possible delay.

Precept issued by the Session Judge to the Magistrate.—With reference to your return, dated 23rd September last, to the Court's Precept of the 19th idem, herewith you will receive the papers and proceedings, together with an extract from the Court's proceedings of this date, in the case of Naro Vitul Kelkur, and you are requested to comply with the exigence of the same, returning this Precept when fully executed.

The papers and proceedings to be returned.

Return by the Magistrate to the Precept of the Session Judge.—In reply to the Court's Precept No. 1641, with extract of proceedings of the 20th instant, received here on the 23rd, the Magistrate begs to state that he pro-

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Appropriation of Property by Breach of Trust.

ceeded to Koorla on the 24th, and made inquiries with regard to the school where the prisoner Naro Vitul Kelkur was a teacher. I was told that it was a school for Muratha children, in which the prisoner was employed to teach that language; that Missionary books were used in the school; but that prisoner had nothing whatever to do with teaching the Christian religion. The Magistrate's impression is that the prisoner committed the act of which he has been found guilty under the instigation of his brother-in-law, on whom Rs. 31 were found, but against whom no proof of guilt was forthcoming.

The papers and proceedings are herewith returned.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—It appears that the object Govind Moreshwur had in depositing the money was never carried out, and the Magistrate, relying upon the prosecutor, and his principal witness being in a respectable rank of life, and not likely to bring a false charge, and deserving of credit, confirmed the Deputy Magistrate's conviction and sentence. The prisoner appears to me also to be in a respectable rank of life, and as little likely falsely to deny the receipt of the money, and I think his character should have been allowed to weigh in his favour as the prosecutor's does in his, and I would annul the conviction and sentence.

W. H. Harrison, Puisne Judge.

Minute by Mr. Harrison.—It appears in this case that the charge of which petitioner has been convicted is keeping fraudulently from its owner property entrusted to him.

The circumstances alluded to by the Magistrate in reviewing the case, and which he justly remarks render it a suspicious one, ought all to have been inquired into and satisfactorily explained before this conviction was recorded.

As the case stands, the complainant should have been

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referred to civil action, and I am of opinion that the conviction should now be annulled.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and prisoner to be discharged.

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SURAT.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 27 of the Calendar of the Surat Sessions Court for 1856. Committed by the Principal Sudder Ameen, JUNARDHUN WASOODAVE, on the 27th August 1856. Tried by the Acting Assistant Session Judge, W. SANDWITH, on the 5th and 6th September 1856. Reviewed by the Session Judge, H. HEBBERT, on appeal, on the 24th September 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner.]

Perjury.

Prisoner.—Kupoorchund Hurukchund Sawuk, aged 46.

Charge.—Perjury; in that he, while giving evidence before the Principal Sudder Ameen of Surat, on the retrial of a suit, No. 1864 of 1853, instituted by Bhugwandas Gokuldas against Bhoychund Hurukchund and others, as a witness on behalf of the said Bhoychund Hurukchund, wilfully made false statements, on solemn affirmation, on Sookurwar, the 11th Poush Shood, Sumvut 1912, (corresponding with Friday, the 18th January 1856,) as follows:—"I did not pass to Bhoychund the receipt for Rs. 35, nor did I receive from the said Bhoychund Rs. 35; the signature on the receipt resembles mine, but I did not sign the receipt"; and on Sunwar, the 12th Poush Shood, Sumvut 1912, (corresponding with Saturday, the 19th January 1856,) as follows:—"The signature on the receipt is not mine, but is a forgery."

W. Sandwith, Acting Assistant Session Judge.

Finding and Sentence by the Acting Assistant Session Judge.—The prisoner is charged with perjury, and pleads

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not guilty. It appears that in 1847, prisoner moved for the execution of a decree, which he had obtained in the Court of the Principal Sudder Ameen, against Bhugwandas Gokuldas and four others, including Bhoychund Hurukchund. The amount of his claim was Rs. 187, and accordingly he caused Bhoychund, one of the defendants in the suit, to be arrested. A Sepoy, by name Kaloo, was with the prisoner on this occasion. The prisoner, together with Bhoychund and the Sepoy, then went to the house of Bhugwandas Gokuldas, who, however, refused to discharge the prisoner's claim. They then went to the Adawlut, and on the way Bhoychund states that the prisoner agreed to release him on payment of Rs. 35. Bhoychund's Goomashta, Doolubhram Bhookundas, afterwards met them, and went to Bhoychund's house to get the required Rs. 35. On arriving at the Adawlut the three sat down near the bell, and after a short interval Doolubhram came with Rs. 35 (Broach). The prisoner then called one Rajaram Tikumdas, and caused him to write out a receipt for Rs. 35, which he did on unstamped paper. Prisoner then signed the receipt, which, being attested by Bhugwandas Duyaram and Khooshalchund Khoobchund, was given to Bhoychund, who paid to prisoner Rs. 35 (Broach). The question before the Court is, did the prisoner pass the receipt in question to Bhoychund in exchange for Rs. 35 or not? The Sepoy Kaloo does not allude to any one having met Bhoychund when coming to the Adawlut; he says, "We did not meet nor speak to any one, nor did we converse with each other on the way." This witness deposes to having seen the prisoner get Rajaram to write something on a piece of paper, which he gave to Bhoychund on receiving from him Rs. 35 (Broach). Kaloo cannot identify prisoner's handwriting. Doolubhram Bhugwandas remembers bringing the money, Rs. 35, from Bhoychund's house, and giving it to him at the Adawlut. He

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does not recollect what currency the money was of. He saw Bhoychund pay the money to prisoner, who then gave the former a receipt; but he does not remember who wrote the receipt, nor does he recollect at what particular place the receipt was written and the money paid. Rajaram Tikumdas identifies the receipt he wrote at prisoner's bidding on the above occasion; he saw prisoner sign and give it to Bhoychund, and receive from the latter Rs. 35 (Broach).

Bhugwandas Duyaram identifies the receipt and also his signature thereon. He corroborates what Bhoychund says as to the paying the money and passing the receipt.

Khooshalchund Khoobchund, the other witness to the receipt, died about a year ago, but his signature is identified by his son Fukeerchund Khooshalchund. Rugoonathdas Kusondas identifies the 'rujamunde' written by prisoner at the Nazir's Office, and his signature as a witness thereto. The signature of the other witness to this paper, Khooshalchund Khoobchund, is identified by his son Fukeerchund. The prisoner's signature on the rujamunde and on the receipt very much resemble each other.

The prisoner denies the charge, but does not bring forward any evidence to support what he says. The Court considers that great caution must be exercised in weighing the evidence adduced, inasmuch as nine years have elapsed since the matter occurred. The Sepoy Kaloo does not appear to have any recollection of Doolubhram having met Bhoychund when coming to the Adawlut, but the rest of his evidence corroborates that of Bhoychund. As regards the paying the money to prisoner, and his passing the receipt to Bhoychund, the Court considers the evidence consistent, and therefore finds the prisoner (Kupoorchund Hurukchund) guilty of perjury; in that he, while giving evidence before the Principal Sudder Ameen of Surat, Rao Baha-

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door Junardhun Wasoodew, on the retrial of a suit, No. 1864 of 1853, instituted by Bhugwandas Gokuldas against Bhoychund Hurukchund and others, as a witness on behalf of the said Bhoychund Hurukchund, wilfully made false statements, on solemn affirmation, on Sookurwar, the 11th Poush Shood, Sumvut 1912, (corresponding with Friday, the 18th January 1856,) as follows:—"I did not pass to Bhoychund the receipt for Rs. 35, nor did I receive from the said Bhoychund Rs. 35; the signature on the receipt resembles mine, but I did not sign the receipt"; and on Sunwar, the 12th Poush Shood, Sumvut 1912, (corresponding with Saturday, the 19th January 1856,) as follows:—"The signature on the receipt is not mine, but is a forgery." And after considering the nature of the offence, and the punishment prescribed in the Regulations, the Court passes on the prisoner the following sentence:—That you, Kupoorchund Hurukchund, be imprisoned and kept to hard labour for one (1) year. (Regulation XIV. of 1827, Section XVI. Clause 2nd.)

H. Hebbert, Session Judge.

Review by the Session Judge on Appeal.—It appears the prisoner having obtained a decree against four persons, sought enforcement thereof, and, under date the 4th May 1847, caused one of the defendants (Bhoychund Hurukchund) to be apprehended. He was brought to the Adawlut for the purpose of being imprisoned, and there effected a compromise with the prisoner, who, on his giving him Rs. 35 in cash, consented to his release. A few days afterwards, on the 10th May 1847, the prisoner again sought the enforcement of his decree, and caused another of the defendants (Bhugwandas Gokuldas) to be apprehended, when that person paid him the amount due in full, as required. Subsequently, on the 9th May 1853, Bhugwandas sued his co-defendants to recover from them the proportion of the aforesaid decree which they ought to have paid. In the course of that

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suit Bhoychund Hurukchund produced the receipt in question, as having been given him by the prisoner, for the Rs. 35 above alluded to, urging it as an acquittance in full, and therefore seeking exemption from Bhugwandas's demand. He called the prisoner, amongst others, to prove the validity of the said receipt, when the prisoner deposed on solemn affirmation, as recited in the charge, that it was a forgery, and that he never signed it. His motive for this was clear. Had he admitted it, he stood self-condemned for having, in his second application, failed to deduct the Rs. 35 paid him, and caused Bhugwandas to pay him the same over again. The Principal Sudder Ameen, in committing the prisoner, has thrown out divers insinuations against the credibility of the witnesses for the prosecution, and also expressed his opinion that the signature of the prisoner on the receipt is not in his handwriting. The Court, however, *wholly* dissents from this last. So far as a comparison of handwriting goes, it has not the slightest doubt the signature to the document No. 16, admitted as that of the prisoner, and the signature on the receipt, were written by the same person; and in regard to the evidence, the Court agrees with the Acting Assistant Session Judge that, bearing in mind the time that has elapsed since the transaction alluded to took place, it is as consistent as could be expected, and is quite trustworthy.

The prisoner's Vakeel dwells on the circumstance of no allusion being made in the document No. 16 to the Rs. 35 in question; but this is accounted for by the fraudulent stipulation in the receipt, that they were to be returned should the prisoner succeed in recovering the whole amount of his decree, as he did, from one of the other defendants. Under such circumstances, any mention of them in the document No. 16 would have defeated this object. The Nazir would have insisted on

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endorsing the Rs. 35 as paid on the back of the decree. This plea, therefore, is futile.

The Court sees no ground for interference with the conviction or sentence, and rejects the prisoner's petition, which is endorsed accordingly to be returned to him.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—In this case it appears that the Principal Sudder Ameen, after deciding a suit, sent the deposition of the prisoner Kupoorchund and other documents to the Judge, with a request for instructions as to what steps he should take with regard to him. The Judge, after deciding the appeal which was brought from the Principal Sudder Ameen's decree, directed the Principal Sudder Ameen to prepare a case of perjury against the prisoner, which, in compliance with the Judge's order, but against his own opinion, the Principal Sudder Ameen did.

The case was sent to the Assistant Session Judge to try, and he convicted the prisoner, and the Session Judge on appeal affirmed the sentence.

I do not think the course pursued in this case was the correct one. The interpretation of the 6th August 1832, on Clause 1st, Section IX. Regulation XII. A. D. 1827, provides that in case of perjury committed before a Civil Court, that Court shall make the committal; but that certainly must be held to apply to those cases only which are so clear that the Court has no doubt about them, and is prepared at once to commit, not to cases which are so doubtful that it is only after the appeal has been decided that it is deemed right to commit the witness. Those cases should be left, like others in which the perjury may not become apparent until some time after, to be taken up and be disposed of by the Magistrate. It never could be intended that the Civil Court should be able, at any future time, to commit

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a prisoner because he had, on some former occasion, perjured himself before the Court.

I do not, however, think the defect in procedure fatal to the case, which, seeing the opinion the Principal Sudder Ameen had of it, he never should have committed; but I cannot agree with the Assistant Session Judge, and do agree with the Principal Sudder Ameen, that the witnesses are not sufficiently trustworthy, and the case altogether too suspicious for it to be safe to convict upon the evidence. I would therefore annul both the conviction and sentence.

The case is one that ought not, I think, to have been left to an Assistant to decide, and I would request the Session Judge to point out to his Assistant that the Decrees Nos. 5 and 7 need not have been recorded; the facts they were intended to prove, viz. that decisions were given, were just as well proved by the witnesses. I would also request his attention to the depositions of the witnesses Rajaram and Bhugwan (Nos. 9 and 10), who must have been asked leading questions by the Assistant Session Judge, or the evidence they gave could not have been obtained from them in the order in which it was given, and I would request him to show his Assistant how the evidence was procurable without any leading questions being put.

I would also request him to refer to Morris's Reports for May last, page 598, for the proper form in which witnesses should be committed by Civil Courts for perjury, instead of the one the Principal Sudder Ameen has adopted in this case, though under the circumstances, as there were mistakes from the beginning, perhaps the mistake in the form of committal was the least serious of them.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—I fully concur with the Session Judge and his Assistant in the view they have taken of this case. I consider it proved that the prisoner (Kupoorchund) did receive the Rs. 35 and pass the

receipt, both of which he has denied on solemn affirmation before the Principal Sudder Ameen; he has therefore been rightly convicted of perjury, and received, to my idea, a well-merited punishment. I see no reason to interfere, and would reject the petition.

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Resolution of the Sudder Foujdaree Adawlut.—Referred to a third Judge on the conviction.

Minute by Mr. Harrison.—This case is a very suspicious one, and I do not think that the perjury is established.

W. H. Harrison, Puisne Judge.

The Principal Sudder Ameen's objections to the evidence seem to me just. It is strange that the witness No. 11, who keeps books, should not have any entry of the item of Rs. 35 for which the receipt was given. I must give my vote for an acquittal.

I concur with Mr. Frere as to the procedure of committal of this case being erroneous.

Final Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoner to be discharged.

Present, WILLIAM EDWARD FRERE, ROBERT KEAYS, Puisne Judges.

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[Case No. 127 of the Calendar of the Ahmedabad Sessions Court for 1856. Committed by the First Assistant Magistrate, W. A. RITCHIE, on the 5th September 1856. Tried by the Session Judge, A. B. WARDEN, on the 12th and 13th September and 22nd and 24th October 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut by the Session Judge.]

Prisoners.—No. 1, Veerabhai Hursoorbhai, Charun, aged 35.
2, Ameer Moola, Charun, aged 50.

Wilful Murder.

Charge.—Wilful murder; in having, on or about Thursday, 14th August 1856, (corresponding with Shrawun Shood 13th, Sumvut 1912,) within the limits of Bordee village, Bhownuggur Talooka, Ahmedabad

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Zillah, purposely, and without justifiable or extenuating cause, deprived of life Ramabhai Geegabhai, by wounding him with swords on the throat and hand, and occasioning injuries, from the effects of which he then and there died; prisoners thereby rendering themselves amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827.

A. B. Warden,
Session Judge.

Finding and Sentence by the Sessions Court.—The Inquest Report (No. 3), which has been proved by the evidence of witnesses Nos. 1 and 2 (Gala and Rawajee), proves that the death of the deceased was caused by two sword-wounds, one of which had all but severed the head from the body. From the evidence of the witness No. 5 (Moola), it appears that on the day in question, a little before sunset, the witness and the deceased left off ploughing, and having let their bullocks loose to graze, sat down on the high ground between the two fields. After a while the deceased went to the foot of the high ground to prevent his bullocks destroying the grain that was growing in his field, and the witness went to drive away some 'nylghi'; the witness went some distance after them. As he was returning, he heard the deceased shouting to him to come quickly, for he was being murdered. The witness, on arriving within ten or twenty paces from where the deceased was, perceived two men running away with naked swords in their hands, and the deceased lying on the ground. On going up to deceased, he found that he was dead, his head having been nearly severed from the body. This witness has declared that he is positive that the prisoners at the bar are the two men whom he saw running away, for they looked back as they were running; the deceased, when shouting for help, cried out that Veerabhai (prisoner No. 1) was killing him. From the evidence of the witness No. 6 (Alabhai), it is proved that he was in a field near that of the deceased on the evening in question, and that about sunset he perceived

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the witness above mentioned and the deceased sitting together on some high ground; that about a quarter of an hour before dusk he heard the deceased call to the above-mentioned witness by name to come quickly, for he was being murdered by Veera and Ameer, the prisoners at the bar; as this witness was running to the assistance of the deceased, he perceived two men with drawn swords coming towards him; he got alarmed and crouched down, and they passed within fifteen or twenty paces of him; he recognised them to be No. 1 (Veera) and No. 2 (Ameer), the prisoners at the bar. After they had gone by he heard Moola, the abovementioned witness, call out that Ramabhai (the deceased) had been murdered; on going up to the spot, he found that the deceased Ramabhai had been murdered. The evidence of these two witnesses corresponds in every particular, with one single exception, viz. that the former has deposed that the deceased only mentioned the name of one of his assailants, whereas the latter has deposed that the deceased mentioned the names of both. Besides the testimony of these two witnesses there is no other evidence against the prisoners, except as to the prisoner No. 1 (Veerabhai) having a motive for getting rid of the deceased. Before proceeding to notice the evidence regarding the motive that the prisoner No. 1 (Veerabhai) had for committing the murder, the Court considers it necessary to observe that the two witnesses (Nos. 5 and 6, Moola and Alabhai), while giving their evidence, exhibited no *animus* against the prisoners, and gave their evidence in a straightforward manner, and without giving rise to any suspicions as to their having been tutored. The murder was committed on the evening of the 14th of August; the evidence of the brother of the deceased was taken the next day by the Joint Police Amuldar; and on the following day the two witnesses above alluded to were

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examined, and the story told then by them corresponds with what they have stated before this Court. The witness Moola, moreover, when questioned by the Mookhee, immediately on his arrival at the scene of the murder, at once mentioned the names of the prisoners as the murderers, and the name of their village, as also the direction in which they had gone. Had the witnesses Moola and Alabhai not accused the prisoners till some days after the murder was committed, their testimony might have been deemed unworthy of credit, but as they at once accused the prisoners, the Court sees no cause to doubt them. A pair of shoes was found near the corpse, but no clue can be discovered as to whom they belong, although they were returned to the Magistrate in the hope that something fresh might be discovered. They are too wide for both the prisoners, and, if anything, a trifle short for them both, but, as *they appear* to have always been worn down at the heels, *they* might have been worn by either one or other of the prisoners without their having been inconvenienced by their being rather short. The prisoner No. 2 (Ameer), when apprehended, had on a pair of drawers that were apparently stained with blood, but the evidence of the Civil Surgeon (No. 10)* sets that point at rest, and proves that the stains had been produced by some dye, most likely vegetable, and that not the least trace of blood was discoverable. The prisoner No. 1 (Veera) is the nephew of the prisoner No. 2, and they reside together. In their house were found four swords; one of them, which ap-

* *Deposition by the Civil Surgeon.*—I, David Wyllie, aged 36 years, Christian religion, Civil Surgeon of Ahmedabad, depose on oath that I examined the drawers before the Court. There were several spots or stains on the cloth, greatly resembling those of blood; but, on testing and examining the same, I am fully of opinion that they were produced by some dye, most likely vegetable. In the various processes adopted in testing the stains, not the least trace of blood was discoverable.

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peared to have been recently smeared with ghee, was found in a chest; prisoner No. 1 (Veera) said that it belonged to a relative, who had left it with him. The prisoner, before the Court, declined calling his relative, saying that as his relative had denied all knowledge of the sword before the Joint Police Amuldar, he would do so again. Prisoner's inability to prove to whom the sword belongs tells against him. The evidence of witness No. 8 (Nathoojee) proves the discovery of the sword in the house occupied by prisoners. The next point that requires to be noticed is, what motive the prisoners had for the commission of the deed? The evidence of Bhaeejee (witness No. 4), the brother of the deceased, proves that the sister of prisoner No. 1 (Veerabhai) was betrothed sixteen years ago to the deceased, and the marriage ought to have taken place when she was thirteen or fourteen, whereas she is now twenty, and the marriage has never taken place, his brother, the deceased, being too poor to give the usual marriage dowry; and the prisoner No. 1 refusing to allow the marriage to take place without the dowry being given, the prisoner No. 1 tried to induce the witness and his brother the deceased to give a release and let the prisoner No. 1 marry her to some one else; but the deceased was obstinate, and would not give the release, and without the release prisoner No. 1 (Veerabhai) could not marry her to any one else. Prisoner No. 1 (Veerabhai) fully admits the above, and, what is more, he admits that she is five-and-twenty years old; so that the motive of prisoner No. 1 for wishing to get rid of the deceased is perfectly clear. His sister being no longer young for a Native, and long past the age when females are usually married, her brother was anxious to have her married. Even if prisoner No. 1 had denied the above facts, there still would have been sufficient proof thereof, for the evidence of the Sowcar Megjee (witness No. 13) proves that what the

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brother of the deceased has stated, about his having borrowed money a short time before the murder, for the marriage of the deceased, is true. Both the prisoners tried to prove *alibis;* the prisoner No. 1 (Veerabhai) that on the day of the murder he was at home all day and all night, attending to an aunt of his who was very ill and died the next day; the prisoner No. 2 (Ameer) that he was looking after certain grass lands belonging to prisoner No. 1 (Veerabhai) all that day and night, and did not return home until after his aunt was dead. The prisoner No. 1 (Veerabhai) first gave the names of two witnesses before the Police Authorities; but when he found that they had given evidence to the effect that they had not seen him on the day in question, he gave the names of three other witnesses, who have given evidence (vide exhibits Nos. 18, 19, and 21) to the effect that at the time of the murder they saw the prisoner No. 1 in his own house; but their evidence is not to be relied on, 1*st*, because the prisoner did not mention their names until his two firstmentioned witnesses failed to make good his *alibi; 2nd*, because these witnesses, not contented with stating that they saw prisoner No. 1 (Veerabhai) in his house, deposed that they also saw the prisoner No. 2 (Ameer) at the same time and place, whereas prisoner No. 2 has tried to prove that he was elsewhere. The two witnesses cited by prisoner No. 2 have failed to corroborate prisoner's assertion. The failure on the part of the prisoners to establish *alibis* strengthens the evidence against them. Although none of the witnesses saw the attack committed on the deceased, yet, as the prisoners are proved to have been seen running away, with naked swords in their hands, from the spot where the deceased was murdered, and as it has been proved that the prisoner No. 1 (Veera) had a reason for wishing to get rid of the deceased, the Court considers their guilt fully established. It is very probable that the

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deed was actually committed by prisoner No. 1 (Veerabhai), but the other prisoner, by being present and countenancing it, is equally criminal. 1856 December 3. AHMEDABAD. Wilful Murder.

The prisoners are accordingly found guilty of wilful murder; in having, on or about Thursday, 14th August 1856, (corresponding with Shrawun Shood 13th, Sumvut 1912), within the limits of Bordee village, Bhownuggur Talooka, Ahmedabad Zillah, purposely, and without justifiable or extenuating cause, deprived of life Ramabhai Geegabhai, by wounding him with swords on the throat and hand, and occasioning injuries from the effects of which he then and there died.

After taking into consideration the nature of the offence proved against you, prisoners No. 1 (Veerabhai Hursoorbhai) and No. 2 (Ameer Moola), and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVI. Clause 4th, of 1827, the sentence of the Court is that each of you be transported beyond seas for the term of your natural life. This sentence is, however, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The deceased (Ramabhai) was found dead with two wounds on his body, one on the wrist of the right hand, and the other almost severing the head from the body; and a pair of shoes lying near the body, the owner of which cannot be discovered. W. E. Frere, Puisne Judge.

There are grounds to suspect Veerabhai of the crime, from a disagreement between him and deceased, and Alabhai (witness No. 6) declares that the murderers passed within fifteen or twenty paces of him, and he recognised the prisoners Veerabhai and AmeerMoola. On searching Veerabhai's house swords and stained clothes were found there; but the stains were proved to be vegetable, and one sword, smeared with ghee, was found concealed in a chest. The defence set up is an *alibi*, which, however,

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is not proved. No attempt appears to have been made, by examining the scene of the murder, to discover the murderers or to trace them from thence home, and the whole proof rests upon the credibility of the witness Alabhai, and the failure of the defence, which, though strengthening the evidence for the prosecution, is not proof of the charge.

The Session Judge says that the witness Alabhai is worthy of credit, but, with every confidence in Mr. Warden, I confess myself unable to convict on that evidence alone, when so much that might have been done to corroborate the evidence has been left undone.

There appear to be grounds to suspect Veerabhai, and I should not be surprised to find that he instigated the murder, and that the sword found concealed in his house was the one used on the occasion; but there is not sufficient proof to convince me that he and *Ameer* Moola committed the murder, and they must be acquitted and discharged.

[The last paragraph of Mr. Frere's Minute forms the Resolution of the Court.]

R. Keays, Acting Puisne Judge.

Minute by Mr. Keays.—I have very great doubts about this case. Moola and deceased were seated together after the labours of the day. They separated about quarter of an hour before dusk; Ramabhai to make some arrangement about his bullocks, and Moola to drive away some nylghi from his field. On Moola's way back he heard Ramabhai call out for assistance, as he was being murdered, and, in reply to his question, was told by deceased that it was by Veerabhai. He went up and found Ramabhai dead, and saw the two prisoners running away with naked swords in their hands. He also adds that Alabhai did not see the prisoners running away, as he was too late. Alabhai, on the other hand, says the prisoners, after committing the murder, ran away, and that they passed within twenty paces of him.

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Moola sent Alabhai to inform the Mookhee and Ramabhai's brother, to neither of whom did Alabhai mention the names of the murderers, for this information was obtained from Moola. The Mookhee says he told the Banian, who wrote the report for him to the Police Amuldar, to mention the names of the prisoners, but whether he did so or not has not been cleared up;—a very serious omission on so very important a point. If he did not do so, the inference is that their names were not mentioned until the arrival of the Police Amuldar, in which case the whole of the evidence of these two witnesses would be open to very grave suspicion.

I think the prisoners must be acquitted and discharged.

Resolution of the Sudder Foujdaree Adawlut.—The prisoners are acquitted, and to be discharged.

The Session Judge, intending to use the *alibi* which failed as evidence for the prosecution, should have proved the prisoners' statements, and recorded them for the prosecution, and then have taken the evidence of the witnesses who failed to prove the *alibi* as evidence in support of the charge.

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TANNA.
Notice by a Magistrate.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Notice issued by the Magistrate of Tanna, E. C. JONES, and referred to the Sudder Foujdaree Adawlut on the 1st September 1856.]

[See pages 386 to 388, Vol. VI., for previous proceedings in this case.]

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In acknowledging the receipt of this Precept, the Magistrate begs to state, with reference to the 1st paragraph of the extract from the Court's proceedings therewith received, that as the notice is addressed exclusively to persons halting and making use of the 'dhurumsala,' he conceived it to be

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sufficiently clear as it stood; it shall, however, be made more so.

Outside the dhurumsala would mean beyond the hedge of the compound, while all that was intended (and which is the common meaning of the Murathee) was that people were not to cook in the verandah and against the walls of the building.

The directions contained in the extracts have been duly attended to.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to certify the amended Proclamation.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—As directed in the Court's extract, dated 5th instant, which accompanied this Precept, the Magistrate has the honour to certify the amended Murathee Proclamation, together with its English translation.

Amended Injunction under Regulation XII. Section XIX. of 1827.—In April 1856 the Magistrate of Tanna, on his annual tour, visited the dhurumsala at Datewra, Talooka Mahim, in the Tanna Collectorate, and observed that it had been in various ways dirtied by travellers who halt there. In order to prevent a recurrence of this, Notice, under the provisions of Section XIX. Regulation XII. of 1827, is hereby given that from this day forward all persons who have recourse to this dhurumsala shall observe the following rules:—

Travellers are prohibited during the fair season from making hearths or fire-places for cooking inside the dhurumsala at Datewra; but those who have occasion to cook must do so outside the building, and must clean out the place used for such purposes before leaving the dhurumsala.

Horses, bullocks, or other animals must be tied up outside the building, and their places must be swept and kept clean from time to time by the owners or attendants.

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Notice by a Magistrate.

Travellers are prohibited from heaping filth, &c. in the dhurumsala compound.

The dhurumsala is built exclusively for travellers, and not for continuous occupation. Fukeers and Gosaees will therefore not be allowed to use it for more than five days at the most.

Travellers must not obey calls of nature within a distance of four hundred paces from the dhurumsala.

No shops of intoxicating liquor or drugs shall be admitted under the roof of the building.

The above Rules will be strictly enforced, and persons found infringing them in any way will be punished according to the Regulation above quoted.

Resolution of the Sudder Foujdaree Adawlut.—Recorded.

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TANNA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 1 of the Criminal Return of the Magistrate of Tanna for September 1856. Tried by the Magistrate of Tanna, E. C. JONES, on the 30th September 1856. Proceedings certified, on the requisition of the Sudder Foujdaree Adawlut.]

Wilful and Negligent Omission; and Endangering the Safety of Passengers by Railway.

Prisoners.—No. 1, David Joseph, Christian, aged 25.

2, Damodhur Ramchunder, Sonar, aged 25.

3, Shimga Lungda Shelkur, Augree, aged 30.

Charge.—Wilful omission, endangering the passengers by railway (under Act XVIII. of 1854, Sections XXV. and XXVIII.); in having, on Friday, the 19th of September 1856, (Bhadrupud Wud 5th, Shuké 1778,) allowed a 'larry' or truck laden with stones to remain on the railway near Perseek, in the Tuloje Talooka, at the

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TANNA.

Wilful and Negligent Omission; and Endangering the Safety of Passengers by Railway.

time a train was about to pass, thereby endangering the whole of the passengers by the said train, which came to the spot at about 8.40 A. M., well knowing that they were bound to remove the said truck on the approach of the train, of which they had been forewarned.

Also in having, on the same spot, and at the same time, negligently and without lawful excuse endangered the safety of the passengers by the said train, in having left a larry or truck on the rails when a train was expected to pass, without taking the usual precautions by signals.

Prisoners plead not guilty.

E. C. Jones, Magistrate.

Finding and Sentence by the Magistrate.—There is no proof whatever of the prisoners having intentionally placed the larry on the rails for the purpose of endangering the lives of the passengers by the train; they are therefore pronounced not guilty of the first charge. With regard to the second charge, however, there can exist no doubt whatever of the accident having occurred through gross negligence on the part of the people employed on the spot; their exertions to show the signals as the train was actually running into the larry were not the result of proper caution, but of alarm, when ordinary precautions had been neglected entirely. The Magistrate considers the first prisoner to blame for not having taken the slightest trouble to clear the larry from the line, where he knew perfectly well it had been working. Warning seems to have been given of the train being nearly due, and the fact of these people having kept the larry running on the line at all, just before the expected train was about to pass, would amount to an act punishable under Section XXVIII. Act XVIII. of 1854 of the Railway Act, even if no collision had taken place. As it happened, it appears that it was by the merest chance that the engine and train were not upset.

Under the circumstances, the Magistrate thinks it

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Wilful and Negligent Omission; and Endangering the Safety of Passengers by Railway.

necessary to make an example of the prisoners, who are accordingly convicted of the second charge, and sentenced as follows:—

David Joseph to pay a fine of thirty (30) rupees, or suffer two (2) months' imprisonment.

Damodhur Ramchunder to pay a fine of twenty (20) rupees, or suffer two (2) months' imprisonment.

Shimga Lungda to pay a fine of ten (10) rupees, or suffer two (2) months' imprisonment.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The prisoners have been convicted of a crime punishable under the Regulations, if proved, and as they have not appealed, we may conclude they are satisfied of the justice of the sentence, and, as all I wanted to see was whether an offence had been committed, these proceedings may be returned.

Resolution of the Sudder Foujdaree Adawlut.—The proceedings to be returned.

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December 10.

TANNA.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 55 of the Calendar of the Tanna Sessions Court for 1856. Committed by the Assistant Magistrate, C. GONNE, on the 19th June 1856. Tried by the Acting Session Judge, H. P. ST.G. TUCKER, on the 14th, 15th, 16th, and 17th July 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Acting Session Judge.]

Murder, attended with Robbery; and Concealment of Murder after the Fact.

Prisoners.—No. 1, Rutnia bin Koorya Ghorbarya, Warlee, aged 35; and 18 others.

Charge.—Against prisoners Nos. 1 to 13 murder, attended with robbery;* in that they did, on or about the 28th May 1856, (Mitee Wuishak Wud 9th, Shuké 1778,) at Wankas, Purgunna Oodwa, Talooka Sunjan, Tanna Division, Zillah Konkun, in company with two other persons not apprehended, without justifiable or extenuating cause, fall upon and assault Kureem *wulud* Ibrahim, Rahimon wulud Khoodabukus, Jetia wulud Boodurjee, Hoosein wulud Peerbukus, Abdool Rahimon wulud Khajao, and Buksha Mahomedan (father' sname unknown); who were travelling from Bombay to Guzerat, and beat them with bows, clubs, and other similar weapons, in such a manner that Buksha died the same evening in consequence of the injuries he had received, and his companions all suffered severe bodily injury; and in that they did, at the same time and place, take from the possession of the said travellers cash and other property, valuing altogether Rs. 107-14-9. (Regulation XIV. Section XXVI. Clause 1st, and Sections XXXVI. and XXXVII. of 1827.)

Further the prisoner No. 8 and prisoners No. 14 to 19 are charged with concealment of murder after the fact; in that they, prisoner No. 8 (Jana bin Posha), and prisoners No. 14 (Kakdia), No. 15 (Rundhia),

* N.B.—The specification of serious assault is omitted from the charge, it not being necessary.

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Murder, attended with Robbery; and Concealment of Murder after the Fact.

No. 16 (Lukhma), No. 17 (Walia), and No. 18 (Jumna), on or about the 29th May 1856, (Mitee Wuishak Wud 10th, Shuké 1778,) did bury the corpse of the said Buksha (father's name unknown), who had been murdered as aforesaid, and, though well knowing that the deceased had been murdered, did give no information of the fact to any Police or other Authority; and prisoner No. 19 (Posha) in that he, being at the time Police Patel of the village, and well aware that the deceased Buksha had been murdered, did give no information to the District Police Officer or any other Authority on the subject, and did permit the body to be buried without making any inquiry into the circumstances of the death. (Regulation XIV. Section XXVI. Clause 1st, and Section I. Clause 5th.)

The prisoners severally plead not guilty.

H. P. St. G. Tucker, Acting Session Judge.

Finding and Sentence by the Sessions Court.—It is most clearly established by the evidence of the witnesses Nos. 5, 6, 7, 8, and 9, and deceased (Buksha), who have been examined on this trial, and the admissions of the prisoners, that on the evening of 28th May 1856, five Mahomedan drovers and one Hindoo, who were returning from Bombay to Deesa, passed by the village of Wankas, in the Sunjan Talooka, and that at a well near that village they met the prisoner No. 7 (Jana bin Jiola) and prisoner No. 13 (Mahadia), who, taking alarm at their appearance, ran into the village and described them as men-stealers, upon which a great number of villagers turned out and beat them so violently and cruelly with clubs, stones, bows, and other similar weapons, that one drover (Buksha) died the same night, and two others, named Rahimon and Hoosein have received permanent injury, while all more or less have suffered most severely from the treatment which they received. The assailed parties have not been able to give a clear or connected account of the details of the

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Murder, attended with Robbery; and Concealment of Murder after the Fact.

assault, but it would appear that they were pursued for about the distance of a koss, and knocked down one after another in succession ; afterwards they were passed on by the inhabitants of the neighbouring villages from village to village, in the course of which journeyings Buksha died. The survivors and the corpse were finally taken back to Wankas, where the former were detained the greater part of the next day, and the body was buried.

The witnesses for the prosecution identify different prisoners as having been actively engaged in the assault, as is shown by the following table:—

Witness.	Parties who took an active part in the Affray.	Parties who struck deceased Buksha.	Party who gave the Death-blow.	Parties standing near.
No. 5, Kureem	Prisoners Nos. 1, 2, 3, 4, 5, 10, and 11.	Prisoners Nos. 1, 2, 3, and 10.	Prisoner No. 1.	
No. 6, Hoosein	Prisoners Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, and 12.	Prisoners Nos. 3, 4, and 5.	Prisoner No. 5.	
No. 7, Rahimon	Prisoners Nos. 1, 2, 3, 9, and 10.	Prisoners Nos. 1, 2, 3, and 10.	Prisoner No. 1.	
No. 8, Abdool Rahimon.	Prisoners Nos. 1, 2, 3, 5, 10, 11, and 12.	Prisoners Nos. 1, 2, 3, and 10.	Prisoner No. 1.	
No. 9, Jetia	Prisoners Nos. 1, 2, 3, 4, 7, 9, 10, and 11.	Prisoners Nos. 1, 2, and 10.	Prisoner No. 1.	
No. 10, Somia	Prisoners Nos. 1, 2, 3, 9, and 10.	Prisoners Nos. 1 and 10.	Prisoner No. 1.	Prisoners Nos. 5, 7, and 13.
No. 11, Posha Ambut	Prisoners Nos. 1, 2, 3, 9, and 10.	Prisoner No. 1.	Prisoner No. 1.	Prisoners Nos. 5, 7, and 13.

The prisoners No. 1 (Rutnia), No. 2 (Jana bin Nowjee), No. 3 (Vikia), No. 4 (Rama), No. 5 (Nowsha), No. 6 (Posha Bendya), No. 7 (Jana bin Jivla), No. 9

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(Jewia bin Lukhma), No. 10 (Dhurma), No. 11 (Jana Furlia), No. 12 (Jetia), all admit they took part in the assault, although they describe their own conduct as limited to a kick or slap administered to one or other of the unfortunate travellers. These prisoners may therefore justly be convicted of murder; for though, if the accounts of the witnesses No. 12 (Rundia bin Ooglia) and No. 13 (Kakdia bin Kutia) be correct, the death of the deceased Buksha may have been hastened by the journeying which the villagers of Wadowlee, Kowad, and Talasree made him undertake that night, through the dread that he or some of his companions might die within their limits, yet the immediate cause of his death was the treatment he had received at the hands of these prisoners, and the prisoners are the persons responsible for having left him in the state he was within the boundaries of a neighbouring village. The charge of robbery is, however, not established against them. There is nothing but the evidence of the complainants to prove that they were robbed, and these persons have not given their testimony in a manner that would lead me to place reliance on their unsupported statements on this point. In fact their depositions have been so little satisfactory, that had their statements not been corroborated by other evidence, and the admissions of the prisoners themselves, it would have been difficult to ground a conviction on them.

Neither the prisoner No. 8 (Jania bin Posha) nor the prisoner No. 13 (Mahadia) admit they were concerned in the assault, and only one witness (Hoosein, No. 6) deposes that the former was one of the assailants, while no one can affirm that the latter struck anybody. Both of these prisoners are entitled to an acquittal on the charge of murder.

But the prisoner No. 8 (Jana bin Posha), and the prisoners No. 14 (Kakdia), No. 16 (Lukhma), No. 17 (Walia), and No. 18 (Jumna); admit that they buried the

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deceased Buksha, whom they must have known to have been murdered, without awaiting the orders of the District Police Officer on the subject, and the plea that they were acting under the Patel's order will not exonerate them, as they must have been fully aware that it was beyond the competence of the Patel to issue such orders, and that obedience to them, if issued, would be a criminal act. The prisoner No. 8 (Jana bin Posha) is the Police Patel's son, but he is twenty-seven years of age, and quite competent to judge and act for himself, and no command or coercion on the part of his father would justify his act. The prisoner No. 19 (Posha bin Bhikarya), the Police Patel himself, is shown to have been cognisant of the murder on the very night of its occurrence, and to have sent no report to any Police Officer, and to have taken no steps either to apprehend the murderers or to secure the evidence of their guilt. *There is* no proof that he ordered the burial of the corpse, *but it* is quite clear that he permitted the interment. On the day after the murder he absented himself, on the plea that his presence was required by the Deputy Collector. Against him and the other prisoners above named the charge of concealment of murder after the fact is most clearly established.

The prisoner No. 15 (Rundhia Kurbut) is the brother of prisoner No. 9 (Jewia Kurbut), and as the latter has been convicted of murder, concealment on the part of the former is not a punishable offence. (Regulation XIV. Section I. Clause 7th.) This prisoner must therefore be acquitted.

The prisoners No. 13 (Mahadia bin Deojee Bhowar) and No. 15 (Rundhia bin Lukhma Kurbut) are acquitted and discharged.

The prisoners No. 1 (Rutnia bin Koorya Ghorbarya), No. 2 (Jana bin Nowjee), No. 3 (Vikia bin Deojee Bhowar), No. 4 (Rama bin Jana Merya), No. 5 (Nowsha

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bin Sookha Dulvee), No. 6 (Posha Bendya, father's name unknown), No. 7 (Jana bin Jivla Dhodya), No. 9 (Jewia bin Lukhma Kurbut), No. 10 (Dhurma bin Dewal Hadal), No. 11 (Jana bin Bhikla Furlia), and No. 12 (Jetia bin Bhikla Dhodya), are convicted of murder; in that they did, on or about the 28th May 1856, (Mitee Wuishak Wud 9th, Shuké 1778,) at Wankas, Purgunna Oodwa, Talooka Sunjan, Tanna Division, Zillah Konkun, without justifiable or extenuating cause, fall upon and assault Kureem wulud Ibrahim, Rahimon wulud Khoodabukus, Jetia wulud Boodurjee, Hoosein wulud Peerbukus, Abdool Rahimon wulud Khajao, and Buksha Mahomedan (father's name unknown), who were travelling from Bombay to Guzerat, and beat them with bows, clubs, and other similar weapons, in such a manner that Buksha died the same night in consequence of the injuries he had received, and his companions all suffered severe bodily injury.

And prisoners No. 8 (Jana bin Posha Kurbut), No. 14 (Kakdia bin Mahadia), No. 16 (Lukhma bin Hira), No. 17 (Walia bin Potia), No. 18 (Jumna bin Dhaktia), and No. 19 (Posha bin Bhikarya), are convicted of concealment of murder after the fact; in that they, the prisoner No. 8 (Jana bin Posha), and prisoners No. 14 (Kakdia), No. 15 (Rundhia), No. 16 (Lukhma), No. 17 (Walia), and No. 18 (Jumna), on or about the 29th May 1856, (Mitee Wuishak Wud 10th, Shuké 1778,) did bury the corpse of the said Buksha (father's name unknown), who had been murdered as aforesaid, and, though well knowing that the deceased had been murdered, did give no information of the fact to any Police or other Authority; and prisoner No. 19 (Posha), in that he, being at the time Police Patel of the village, and well aware that the deceased Buksha had been murdered, did give no information to the District Police Officer or any other Authority on the subject, and did

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permit the body to be buried without making any inquiry into the circumstances of the death.

All the witnesses but one (No. 6, Hoosein) concur in stating that the prisoner No. 1 (Rutnia) was the man who gave the blow which fractured the deceased Buksha's skull, and their depositions on this point correspond with the assertions of several of the prisoners. In like manner there is a general agreement among all parties that the prisoners No. 1 (Rutnia), No. 2 (Jana bin Nowjee), and No. 3 (Vikia) were the persons who commenced the onslaught, and that they and prisoner No. 10 (Dhurma) took the most prominent part in the proceedings.

This outrage affords another melancholy proof of the lamentable state of ignorance in which the agricultural classes of this district still remain; and the knowledge that such occurrences can take place within so short a distance from the Presidency should be a strong *incentive* to the executive Government to adopt all the *means* in its power to diffuse the blessings of education among the rural population. An absurd rumour, traceable to no ascertained source, that the British Government were about to offer human sacrifices prior to the commencement of the railway works on the Ghauts, and that parties of kidnappers were moving about in search of victims, has obtained ready credence among the Konkun villages, and led to several murderous attacks on unsuspecting travellers, some of which have, like the present one, been attended with fatal results. To no other cause than the existence of this preposterous belief can the present crime be attributed.

The prisoners No. 1 (Rutnia bin Koorya Ghorbarya), No. 2 (Jana bin Nowjee), No. 3 (Vikia bin Deojee Bhowar), No. 4 (Rama bin Jana Merya), No. 5 (Nowsha bin Sookha Dalver), No. 6 (Posha Bendya, father's name unknown), No. 7 (Jana bin Jivla Dhodya), No. 9 (Jewia bin Lukhma Kurbut), No. 10 (Dhurma bin Dewal

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Hadal), No. 11 (Jana bin Bhikla Furlia), and No. 12 (Jetia bin Bhikla Dhodya), convicted of murder, and No. 19 (Posha bin Bhikarya), convicted of concealment of murder after the fact, are sentenced each (subject to the confirmation of the Sudder Foujdaree Adawlut) to be transported for life. (Regulation XIV. Section XXVI. Clause 4th, and Section I. Clause 5th, of 1827.)

With the exception of prisoners Nos. 1, 2, 3, 10, and 19, I shall recommend that this sentence be commuted to three years' imprisonment with hard labour.

* * * * * * * *

The prisoners No. 8 (Jania bin Posha), No. 14 (Kakdia bin Mahadia), No. 16 (Lukhma bin Hira), No. 17 (Walia bin Potia), No. 18 (Jumna bin Dhaktia), convicted of concealment of murder after the fact, are sentenced each to be imprisoned and kept to hard labour for the period of one (1) year from this date. (Regulation XIV. Section I. Clauses 5th and 8th, of 1827.)

Letter from the Acting Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I do myself the honour to forward, for the purpose of being laid before the Judges of the Sudder Foujdaree Adawlut, a counterpart of my proceedings in the above case, wherein eleven prisoners have been convicted of murder, and one, the Police Patel of the village, has been convicted of concealment of murder after the fact, and they have all been sentenced (subject to the confirmation of the Court of Sudder Foujdaree Adawlut) to transportation for life.

In the case of the eleven prisoners convicted of murder, I was precluded by the Regulations from passing a more lenient sentence than I have done, but I am of opinion that the ends of justice will be attained, and the law sufficiently vindicated, if the sentence is carried out on the prisoners No. 1 (Rutnia bin Koorya Ghorbarya), No. 2 (Jana bin Nowjee Dulve), No. 3 (Vikia bin Deojee Bhowar), and No. 10 (Dhurma bin Dewal Hadal) only,

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who would seem to have been the ringleaders and chief actors in the assault. The sentences on the others might, I consider, with propriety be commuted to three years' imprisonment with hard labour.

The sentence on the Police Patel, prisoner No. 19 (Poshia bin Bhikarya Kurbut), should, I think, be carried out. His conduct was in the highest degree criminal, and it is necessary that an example should be made to teach these Officers the responsibility which attaches to them in such matters.

Great delay has, I regret to state, taken place in the transmission of the proceedings in this case to the Sudder Adawlut. This has been chiefly occasioned by an accumulation of criminal business, and now this has been disposed of it will, I trust, not occur again.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—I agree with the Session Judge in his finding and sentences in this case, but as we have no power to pass a mitigated sentence, except of solitary confinement, upon any of those found guilty of murder, I would, in submitting the case to Government for a mitigation of the sentence, recommend that the sentences on Jana bin Nowjee (prisoner No. 2) and Vikia bin Deojee (prisoner No. 3) should also be mitigated, though not to the same extent as the sentences of the others. Somia (witness No. 10), upon whose evidence alone we can rely for the details of the assault, says, "Rutnia struck down one of them by a blow on the head with a bow. After the traveller fell he attempted to rise, but the prisoner No. 10 (Dhurma) beat and kicked him, and prevented his doing so; the other travellers ran on, and the prisoners Rutnia, Jana, and Vikia followed them." From this it is clear that Rutnia felled the deceased Buksha, and Dhurma beat and kicked him, and prevented his rising. I would therefore inflict a heavier punishment upon them than upon Jana and Vikia, who, though among the leaders in

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the assault and pursuit, are not shown otherwise to have used more violence than the common herd. As regards the Patel Poshia (prisoner No. 19), an example must, I fear, be made of him, and I would therefore let the sentence passed upon him be carried out.

In their petition the prisoners accuse Somia of having cause for enmity against them. I would therefore send their petition to the Magistrate, and request he will ascertain and report whether there is any foundation for such an idea.

The Session Judge remarked upon the melancholy proof afforded by this case of the ignorance of the agricultural classes in that district so near the Presidency, and, as a cure, recommends a diffusion of education. I never was in that part of the country until I went there on circuit in 1853-54, and was astonished and grieved to see how much the people were behind the inhabitants of the north of Guzerat, which we have held for exactly the same time, in their knowledge of the English and their rule. In all other parts of the country in which I have served,—Guzerat, the Deccan, and Southern Muratha Country,—I have always found the people anxious to meet those in authority, but from Bassein to Damaun the object of all the people appeared to be to get out of the way. So great appeared to be their anxiety to avoid me, that I feared my servants had misconducted themselves, but the Authorities I met assured me that was not the case (villagers I could find none to inquire from); but no sooner did I cross the Damaun river and leave the Zillah of the Konkun, than I found the villagers as anxious as I have found them everywhere else to meet and converse with one. I have since found that others have observed the same peculiarity that I have in these people, and I am therefore inclined to attribute both the present outrage and the general character of these people, not so much to defect of education

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in its more confined sense, but to their being placed in a part of the country which is no thoroughfare to any other part, but cut off or placed as it were in a corner, apart from all intercourse with Europeans, with a climate, except on the sea-coast, not genial to the European constitution, and a place consequently very seldom visited by Europeans. These people then, probably, know less than any other that their welfare is a subject of constant consideration to Europeans, and I should expect more good to be derived from a greater and more diffused European agency in those Talookas than from any amount of mere scholastic education.

The sentences on all to be confirmed. That on prisoners Nos. 1, 10, and 19 to be carried out. That on prisoners Nos. 2 and 3 to be mitigated to three years' imprisonment; and on prisoners Nos. 4, 5, 6, 7, 9, 11, and 12 to two years'.

Resolution of the Sudder Foujdaree Adawlut, dated 11th September 1856.—The Court confirm the conviction and sentences.

A copy of the petition of the prisoners to the Court is to be sent to the Magistrate, in view to his ascertaining and reporting if there is any foundation for the assertion in it that Somia bin Vasavala bears enmity against them on account of their having preferred a complaint against him regarding their fields.

On receipt of the return of the Magistrate the Court will take into consideration the extent they would recommend the sentence to be mitigated in favour of prisoners No. 2 (Jana), No. 3 (Vikia), No. 4 (Rama), No. 5 (Nowsha), No. 6 (Posha), No. 7 (Jana), No. 9 (Jewia), No. 11 (Jana), and No. 12 (Jetia).

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning this Precept duly executed, the Magistrate of Tanna begs to state that, on calling upon the Third Assistant Magistrate, Mr. Gonne, he reports as follows.

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"The Third Assistant Magistrate has the honour to report that the Police Amuldar of Sunjan has reported that neither the records of the Mamlutdar nor of the Tulatee contain any correspondence connected with any complaints preferred by the prisoners against Somia bin Vasavala on the subject of their fields. The Tulatee moreover reports, that during the four years during which he has filled the Tulateeship of Oodwa, he has heard nothing at all of any quarrel between those people. Neither before the Police, the Assistant Magistrate, nor the Sessions Court did the prisoners start this objection to the evidence of Somia bin Vasavala, nor in their petition to the Sudder Foujdaree Adawlut do they point out any people whose evidence could substantiate their present assertion. It would seem, therefore, to be without foundation."

The Magistrate entirely concurs in the opinion expressed in the above report.

Resolution of the Sudder Foujdaree Adawlut.—The proceedings to be laid before Government, with a recommendation that the sentences on prisoners Jana bin Nowjee (No. 2) and Vikia bin Deojee (No. 3) be mitigated to three years' imprisonment with hard labour, and that the sentences on prisoners Rama bin Jana (No. 4), Nowsha bin Sookha (No. 5), Posha (No. 6), Jana bin Jivla (No. 7), Jewia bin Lukhma (No. 9), Jana bin Bhikla (No. 11), and Jetia bin Bhikla (No. 12) be mitigated to two years' imprisonment with hard labour.

Resolution of Government.—That, in accordance with the suggestions of the Judges of the Sudder Foujdaree Adawlut, the sentence passed on prisoners Jana bin Nowjee (No. 2) and Vikia bin Deojee (No. 3) be mitigated to three years' imprisonment with hard labour; and that the sentences on prisoners Rama bin Jana (No. 4), Nowsha bin Sookha (No. 5), Posha (No. 6), Jana bin Jivla (No. 7), Jewia bin Lukhma (No. 9),

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Jana bin Bhikla (No. 11), and Jetia bin Bhikla (No. 12), be mitigated to two years' imprisonment with hard labour.

Resolution of the Sudder Foujdaree Adawlut.—The warrants to be issued.

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BROACH.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 17 of the Criminal Return of the Magistrate of Broach for September 1856. Tried by the Deputy Magistrate, NOWROJEE BYRAMJEE, on the 24th and 26th September 1856. Confirmed by the Magistrate, G. INVERARITY, on the 27th September 1856. Proceedings certified, on the petition of the prisoner.]

Robbery by Night, with Force.

Prisoner.—Bajeebhoy Nuthoo, Koolbee, aged 30.

Charge.—Robbery, with force, by night (Regulation XIV. Section XXXVII. Clause 2nd, of 1827); *in that,* on the night of the 6th September 1856, (corresponding with Sumvut 1912, Bhadrupud Shood 7th,) in the village of Tralsa, Talooka Broach, he broke the hook of the door of complainant Gooman Oojun, to which the padlock was applied, opened the door, and stole and took away from the said complainant's house a copper vessel worth Rs. 4, and bonds and decrees of the Dewanee Court, and account books of the said complainant, being property of the total estimated value of Rs. 67½, the latter of which were found in the 'wada' of his house concealed under a heap of cotton twigs, &c.; the robbery being committed with a view to defraud the complainant of the sum of Rs. 74 which he owed him, by robbing him of the bonds passed by him for that sum.

Prisoner pleads not guilty.

Nowrojee Byramjee, Deputy Magistrate.

Finding and Sentence by the Deputy Magistrate.—It is established by the evidence of witnesses for the prosecution, and the admission of the prisoner himself, that the complainant's account books, bonds, and decrees were

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found in the wada of the prisoner concealed under a heap of cotton twigs, and that the padlock and broken hook of the front door of the said complainant's house were handed by the prisoner to the complainant on the latter's arrival from Moujé Seedpoore, where he had been to realise the debts due to him; as also that the complainant at the time of his departure from his village (Tralsa) entrusted the key of the padlock in question to the prisoner. Now the prisoner is charged with robbing the complainant of the said documents, and of a utensil worth Rs. 4, on the night of the 6th September, *i. e.* on the same day on which the complainant left his village and entrusted the keys of his house to the prisoner. The prisoner, in his defence, denies all knowledge of the robbery, though he admits that he was entrusted with the charge of the key on the 6th September, and that on the complainant's return he returned the same key, as well as the padlock and broken hook, which he states were found on a dunghill opposite the complainant's house on the 7th. He also states he was absent on the night in question at Moujé Rahd, where he had been to visit a relation of his, and that therefore he could not have been concerned in the robbery, proved by the evidence of witnesses for the prosecution, and admitted by the prisoner himself to have been committed on the very night. How does he then account for the fact of the documents having been found in his wada? He repudiates the idea of some one or other of his five or six relations who live in the same compound with him, and whose houses are, in common with his own, encircled with a brick wall such as to render all access to the spot of strangers all but impossible, and thus renders the only possibility of explaining the fact out of the question. The mere tossing or throwing the documents into the wada would not, according to the evidence of the witnesses, place them in the position they were in, as ad-

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mitted by the prisoner himself. The only way of accounting for it which now remains is by supposing that some stranger must have scaled the wall for the express purpose of concealing the document in the manner it was found. This hypothesis, too, is barred by the admission of the prisoner that there is no enemy of his in his village capable of injuring him by hiding the documents in his wada. The inevitable conclusion therefore is, that the prisoner himself concealed the things there, and that conclusion is amply corroborated by the fact of the prisoner having been found in possession of the very padlock and hook by tampering with which the robbery was committed, for it is absurd to suppose that he discovered them lying on a dunghill opposite the complainant's house, in the absence of any proof which he can adduce in confirmation of his assertion. It is also strengthened by the circumstance that he *had the* very obvious motive for committing the act, viz. to defraud the complainant of the sums he owed him, by robbing him of nothing else than the bonds, which he could not but have thought were among the papers and documents stolen by him, but which, fortunately for the complainant, turned out to have been left in the house of Bhookun Girdhur, and which, on their being produced (No. 13) before the Court, and shown to him, he admits have been passed by him to the complainant, and of which he states he did not know the place of deposit. But above all, the best proof of the fact that he was the perpetrator of the robbery is furnished by his failure to establish the *alibi* set up by him. Not only does his own statement conflict with the depositions of his witnesses, but their several assertions are irreconcileable with the fact, admitted by himself, of the receipt of the key from the complainant on the 6th September, and of his return thereof on the 7th. Now if such was the case, how could he remain at Radh for three or four

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days, as his witnesses allege? Besides, the prisoner names Nursey, Purshotum, and Jora as his witnesses; whereas Nursey Kandas (witness No. 9) mentions Nursey Moorar as another of the prisoner's companions who went to Rahd on a visit to his relation Jora Girdhur, and Jora again ignores Nursey Moorar altogether. Even in point of the number of days the prisoner and his companion remained in the house of Jora at Rahd the witnesses differ considerably; one says he remained for two or three days, another says for four days, whereas the prisoner himself states that he returned the very next day to his village, and none of them can adduce the evidence of an independent witness to prove the fact.

Under these circumstances, no doubt is left on the mind of the Deputy Magistrate of the prisoner's guilt. The Deputy Magistrate has therefore convicted him of the offence laid to his charge, and sentenced him to one (1) year's imprisonment with hard labour, considering the fraudulent intention the prisoner must have had in the perpetration of the crime. Subject to the confirmation of the Magistrate. (Regulation XIV. of 1827, Section XXXVII. Clauses 3rd and 4th, of 1830, Section III.)

G. Inverarity, Magistrate.

Confirmation by the Magistrate.—There can be no doubt of the prisoner's guilt, and the sentence is therefore confirmed.

It was needless to enter in the charge the object which prisoner apparently had in committing the robbery; such matters are usually difficult to prove, and any notice of them at all is quite unnecessary.

The value of the bonds, decrees, &c. should have been stated, and the Magistrate now inserts the same, being Rs. 67½, including the copper vessel.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The only evidence against the prisoner is the fact of the papers being found in his holmstack, and the suspicion which always attaches to failure in proving an

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alibi. The key the prisoner received from complainant, and I cannot see what evidence against him is furnished by his being in possession of the padlock. It is natural if he did find it that he should keep it. It is no proof, nor even a fair argument, I know, that a man did not commit an act because he might have done it easier and in a different way, but I cannot think the charge proved by the evidence before us; and the complainant's own proof of his confidence in the prisoner's honesty, by entrusting his key to his keeping, should have been allowed weight in his favour. The Deputy Magistrate has not taken the pains he should have done in inquiring regarding the search, and whether prisoner had been in custody before the search was made or not; in a more doubtful case than this, that would have been of importance.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are annulled, and the prisoner to be discharged.

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RUTNAGHERRY.

Robbery by Day, without Force.

Present, { WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, } Puisne Judges.

[Case No. 53 of the Calendar of the Rutnagherry Sessions Court for 1856. Committed by the Third Assistant Magistrate, J. ELPHINSTON, on the 9th July 1856. Tried by the Acting Senior Assistant Session Judge, R. H. PINHEY, on the 10th July 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoner, Bala bin Esoo.]

Prisoners.—No. 1, Bala bin Esoo, Koombhar, aged 40.

2, Guno bin Sudojee, Muratha, aged 50.

Charge.—Robbery by day, without force (Regulation XIV. of 1827, Section XXXVII. Clause 4th); in that they did, one day between the 2nd and 16th May 1855, (corresponding with the Hindoo date 15th Shood

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RUTNAGHERRY.

Robbery by Day, without Force.

R. H. Pinhey, Acting Senior Assistant Judge.

and 30th Wuishak, Shuké 1777, Nulnam Sumvut,) rob from the house of Gunesh Jugunnath Gondlekur, in Moujé Paleel, of the Natoo Palwun Division, of the Severndroog District of the Rutnagherry Collectorate, out of an unlocked box, rupees (Company's) and other coins, copper pots, leather bags, and clothes, the whole aggregating in value Rs. 894-14-7.

Finding and Sentence by the Sessions Court.—Prisoners are charged with robbery by day, without force, and plead guilty, and admit the confessions made by them before the Assistant Magistrate.

On their own confessions, considered in connection with the evidence of the prosecutor on solemn affirmation before the Assistant Magistrate read over before the Court, prisoners are convicted of robbery by day, without force; in that they did, one day between the 2nd and 16th May 1855, (corresponding with the Hindoo date, 15th Shood and 30th Wuishak, Shuké 1777, Nulnam Sumvut,) rob from the house of Gunesh Jugunnath Gondlekur, in Moujé Paleel, of the Natoo Palwun Division, of the Severndroog District of the Rutnagherry Collectorate, out of an unlocked box, rupees (Company's) and other coins, copper pots, leather bags, and clothes, the whole aggregating in value Rs. 894-14-7.

Having duly considered the nature of the crime committed, and the punishment assigned thereto in Clause 4th, Section XXXVII. Regulation XIV. of 1827, the Court passes the following sentence:—

That you, prisoners Bala bin Esoo and Guno bin Sudojee Bagool, be each imprisoned and kept to hard labour for the period of two (2) years.

Precept issued to the Acting Session Judge.—The Acting Session Judge is to be requested to certify the finding connected with this case.

Return by the Acting Session Judge to the Precept of the Sudder Foujdaree Adawlut.—Returned duly executed.

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Robbery by Day, without Force.

Precept issued to the Acting Session Judge.—The finding gives the Court no information. The Acting Session Judge is to be requested to certify the case, or, if he prefers it, send up translations of the prisoners' confessions and the prosecutor's statement.

Return by the Acting Assistant Session Judge.—Returned duly executed.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The petition must be rejected. There is no doubt of the petitioners' guilt; the sentence is not too heavy; and their statement in the petition, that they found the parcel and gave it to the Authorities, must be unfounded, as they pleaded guilty before the Assistant Session Judge.

Resolution of the Sudder Foujdaree Adawlut.—The petition of the prisoners is rejected.

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RUTNAGHERRY.

Present, WILLIAM EDWARD FRERE, WILLIAM HENRY HARRISON, Puisne Judges.

[Petition of Ram bin Pillajee and two other Convicts in the Rutnagherry Jail to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Rutnagherry, W. TURQUAND, on the 6th November 1856, for Report.]

Failing to furnish Security.

Prisoners.—No. 1, Ram bin Pillajee.
2, Vitoo oorf Mahado bin Pillajee.
3, Anundia bin Maljogee.

Charge.—Failing to furnish securities required of them.

G. Scott, First Assistant Magistrate.

Order by the First Assistant Magistrate.—Ordered to furnish securities in the sum of Rs. 500 each, or, in default, to be kept in prison for the period of six months.

Petition of Ram bin Pillajee and two others to the Sudder Foujdaree Adawlut.—[Praying that the order to furnish securities might be annulled.]

Precept issued to the Magistrate.—The Magistrate is to be requested to report on the means of the prisoners

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to furnish such heavy security, and to state the time for which it is proposed to secure their good conduct.

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RUTNAGHERRY.

Failing to furnish Security.

Return by the Officiating Magistrate to the Precept of the Sudder Foujdaree Adawlut.—Prisoners were charged with gang robbery before the Third Assistant Magistrate, who, on investigation, discharged them for want of proof. The First Assistant Magistrate in Charge, however, ordered the prisoners to furnish security in the sum of Rs. 500 each for their good conduct for one year, and on forfeiture of the security bond, the security to pay Rs. 500, or to be imprisoned for one year. In failure to furnish the security the prisoners were to be imprisoned for six months.

On inquiry it appears that these prisoners are able to furnish security only to the extent of Rs. 25 each. The period for which it is proposed to secure their good conduct is one year.

The petition is herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate is to be informed that the order for security was erroneous. Security being required for one year, the prisoners should be detained, in failure of furnishing security, for that time, and not for six months only. The Court determine to mitigate the order, and direct that two securities in Rs. 25 each be required from the prisoners for the period already named.

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BELGAUM.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Notice issued by the Magistrate of Belgaum, G. B. S. KARR, and referred to the Sudder Foujdaree Adawlut on the 2nd December 1856.]

Notice by a Magistrate.

Notice, under the provisions of Section XIX. of Regulation XII. of 1827, is hereby given, that hook-swinging at the temple of Bunshunkre, in the limits of the village of Toluchgore, in the Talooka Badame of the Belgaum Collectorate, is hereby prohibited. Disobedience of this Injunction will be punished according to law.

Letter from the Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—With reference to your letter to Government in the Judicial Department, No. 1885, of the 13th August last, on the subject of hook-swinging, I have the honour to forward to the Court of Sudder Foujdaree Adawlut a copy and translation of a Notice issued by me, prohibiting the practice at the following nine places in this Collectorate:—

Talooka Bagulkote .	Seroor. Kersoor. Bhugwutee. Bhewoor.	Talooka Badame.	Bunshunkre. Adgul. Mungulgood. Gujundurghur. Mooshtegeree.

Resolution of the Sudder Foujdaree Adawlut.—To be recorded.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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DHARWAR.

[Case No. 130 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Acting Second Assistant Magistrate, H. N. B. ERSKINE, on the 19th September 1856. Tried by the Session Judge, A. W. JONES, on the 31st October and 1st and 3rd November 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Prisoner.—Nagowa kom Timana, Wudur, aged 30.

Murder and Robbery.

Charge.—Murder and robbery (Regulation XIV. A. D. 1827, Section XXVI. Clause 1st, and Section XXXVII. Clause 4th); in having, on the evening of Friday, the 12th September 1856, (corresponding with 13th Bhadrupud Shood, Shuké 1778,) in the Inam village of Hoolgole, in the Dumul Talooka, in the Dharwar Division and Zillah, purposely, and without justifiable or extenuating cause, deprived of life Rama (a blind child of five or six years old), the son of Busapa bin Bheemapa, by throwing him into a well, and in having stolen from him a silver waist ornament (a 'taeeta') of the value of about Rs. 5-12-0.

A. W. Jones, Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder and robbery, and pleads not guilty.

The complainant deposes that his child, Rama, a blind boy of about six years old, went away, as usual, in the afternoon of Friday the 12th September, to play with the children of some Wudurs who live behind his house in Hoolgole, and that, as the child did not return, he went and inquired about him, and heard from two of his playmates that the prisoner (Nagowa) had taken him away; he therefore complained to the Police Patel.

The Police Patel deposes that, on hearing this, he went and questioned the children also, and on their information questioned the prisoner, who, though she denied knowing anything of the child, appeared very much

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confused. He therefore took her with him, and desired her to tell where she had put the child, and he says, that while on the road which the children described her to have taken, they passed a small path leading to the Kuplee well, on which the prisoner said, "Where are you going? I threw the child into the Kuplee well."

They all went to the well therefore, and the prisoner there admitted that she had thrown the child into it. While at this well, it appears the Koolkurnee called the prisoner out of the crowd assembled round it, and asked her where the ornament was, and after some hesitation she agreed to give it up. She was therefore taken to her house, and the prisoner, the Koolkurnee, the witnesses Kalianapa and Amajee prove that with her own hands she took from underneath a hedge, inside the yard, at the back of her house, the silver ornament called taeeta, which the complainant identified before the Court as his own, and as that worn by the child.

The next morning, the 13th September, the prisoner was taken to the well (which had been watched all night by Shetsundees) by the Police Patel, Koolkurnee, and others, and the body was taken out of it, and identified by the complainant as that of his child. In the evening of that day also, the Police Amuldar came and had an Inquest held on the body, the report of which was proved and recorded before the Court, and it appears that the members were of opinion, from some marks of violence on the throat, that the child had been strangled before he was thrown into the well.

It is then shown that the prisoner confessed the crime before the Police Amuldar on this same evening, and that she confirmed this confession before the Assistant Magistrate on the 19th September. But she did not admit the confession before the Court. Her only defence, however, is a denial of the crime, and an assertion that she was beaten; and the Vakeel objects to the evidence

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as insufficient, and that in cases where there has been more evidence against prisoners the convictions of this Court have been annulled.

With regard to the beating, she does not call or name any witnesses to it, and it is now brought forward for the first time; and it appears, moreover, from the Assistant Magistrate's proceedings, that she not only admitted before him the truth of her confession, but that she pleaded guilty also, and made no defence whatever.

With regard to the evidence, even putting aside that of the child altogether, there is sufficient to show that the prisoner pointed out the well where the body was found, and gave up the ornament, which the complainant and another witness depose to having been worn by the murdered boy, and this is a sufficient corroboration of her confession to make it available as evidence against her. The only thing at all in the prisoner's favour is the evidence of the woman Gidowa, which shows that the boy did not always wear this ornament.

The prisoner's confession is to the effect that she threw the boy alive into the well, while the members of the Inquest were of opinion that he had been strangled beforehand; but this difference can have no effect in the prisoner's favour, and the Session Judge is therefore of opinion that the prisoner must be convicted of murder and robbery, as charged; in having, on the evening of Friday, the 12th September 1856, (corresponding with 13th Bhadrupud Shood, Shuké 1778,) in the Inam village of Hoolgole, in the Dumul Talooka, of the Dharwar Division and Zillah, purposely, and without justifiable or extenuating cause, deprived of life Rama (a blind child of five or six years old), the son of Busapa bin Bheemapa, by throwing him into a well, and in having stolen from him a silver waist ornament (a taeeta) of the value of about Rs. 5-12-0.

And after considering the nature of the crime com-

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mitted, and the punishment assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, the following sentence is passed:—

That you, Nagowa kom Timana, be taken to the common place of execution, and there be hanged by the neck till you are dead. Subject to the confirmation of the Sudder Foujdaree Adawlut.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut.—The unhappy woman's petition to this Court and defence before the Session Judge show that the impression is that culprits have nothing to do but to declare their confessions were extorted to ensure their acquittal. I have not looked at the cases quoted by the Vakeel, but am satisfied that there must have been something more than the prisoners' mere assertion to justify their acquittal. In the present case, the prisoner confessed on the 13th and 25th September, pleaded guilty, and adhered to her confession before the Assistant Magistrate on the 19th; but on the 1st November, before the Session Judge, declared, which the Civil Surgeon's certificate shows was false, that the marks of torture were still visible on her person. Had she been tortured, or in any way injured, the marks must have been visible when she appeared before the Assistant Magistrate and pleaded guilty, and had the case been delayed before the Police Authorities, weight might have been attached to the assertion, but there was no delay in this case, and I cannot receive as true a mere assertion of torture having been used, when I cannot find even grounds to suspect it. The conviction and sentence should, I think, be confirmed.

R. Keays, Acting Puisne Judge.

Minute by Mr. Keays.—In this case the prisoner is proved to have confessed and confirmed her confession before the Assistant Magistrate. She now repudiates the confession; but then she is clearly proved to have pointed out the well into which she threw the boy, as well as to have produced from a place of concealment, at the back of her

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house, an ornament which is identified by complainant as one usually worn by the deceased, and which witnesses say he had on when he went to play with the Wudur children. I consider this to be sufficient corroboration of her confession to justify the conviction and sentence, both of which I would confirm.

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DHARWAR.

Murder and Robbery.

Resolution of the Sudder Foujdaree Adawlut.—Conviction and sentence confirmed.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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AHMEDNUGGUR.

[Case No. 13 of the Criminal Return of the Magistrate of Ahmednuggur for September 1856. Tried by the District Deputy Magistrate, KRISHNAJEE WASOODAVE, on the 11th September 1856. Confirmed by the Magistrate, C. E. F. TYTLER, on the 16th September 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on requisition.]

Prisoner.—Saloo wulud Hunmunta, Koonbee, aged 35.

Appropriation of Property by Breach of Trust.

Charge.—Appropriation of property by breach of trust (Regulation XIV. of 1827, Section XL.); in having, on the 4th of May 1854, (corresponding with Wuishak Shood 7th, Shuké 1776,) at Moujé Sangvi, Talooka Sungumnair, Zilla Nuggur, fraudulently appropriated to his own use a piece of plantation ground, the property of Government, called Bagbet, of Survey No. 12, and of the annual value of Rs. 8-8-0, situated in the jungle of Sangvi, Talooka Sungumnair, cutting down and appropriating to his own use all the trees.

Prisoner pleads not guilty.

Krishnajee Wasoodave, District Deputy Magistrate.

Finding and Sentence by the District Deputy Magistrate.—Before the said patch of land was taken by Saloojee for cultivation, Pandojee had asked it for the same purpose. At that time the Mamlutdar, after making inquiries, reported that the plantation would be destroyed and the land washed away if cultivation were permitted.

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AHMEDNUGGUR.

Appropriation of Property by Breach of Trust.

Mr. Kemball, then Assistant Collector, concurring with the Mamlutdar, issued an order to that effect. There is among that correspondence (document No. 2) the deposition of prisoner, in which he has stated his objections to the cultivation of the land, and he admits his cognisance of the Government Order in which it was decided that the land should not be cultivated. The prisoner, being aware of all these facts, concealed them, and giving Pandojee false hopes (so that he might not inform Government), he sent in an agreement for the land and obtained a reply in his favour. This is proved from Nos. 3 and 4 and 1 and 2. The prisoner is therefore convicted, and, under Regulation XIV. of 1827, Section XL., and Sudder Adawlut's Interpretation thereon of 22nd August 1834, sentenced to pay a fine of fifty (50) rupees, in default to suffer four (4) months' imprisonment without labour. Subject to the confirmation of the Magistrate.

C. E. F. Tytler, Magistrate.

Confirmation by the Magistrate.—There is a constant tendency on the part of the public to encroach on Government 'kooruns' and wood preserves.

In this case the Officiating Patel of the village prevents another Ryot from taking this ground (an island) into tillage, and then he takes it himself, cuts down all the trees, and does much injury to Government and the public.

His crime is a double one; first, fraud, in his official capacity, in misleading his superiors, and in taking what he had himself reported should not be taken by any one; secondly, appropriation of Government property by breach of trust.

The sentence is confirmed.

Resolution of the Sudder Foujdaree Adawlut.—The Court have on many occasions seen Section XL. Regulation XIV. A. D. 1827 strained, but never to such an extent as is shown in this case. The prisoner Saloo, the

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AHMEDNUGGUR.

Appropriation of Property by Breach of Trust.

Patel of Sangvi, is charged with appropriation of property by breach of trust, in having, as the charge says, "appropriated to his own use a piece of plantation ground the property of Government, cutting down and appropriating to his own use all the trees"; or, as the Magistrate says, he "prevents another Ryot from taking an island into cultivation, takes it himself, cuts down all the trees, and does much injury to Government and the public." The Court do not find a particle of proof of his ever having cut down a single stick, and all that the evidence in the case shows is that Pandojee, in 1852, wanted the island, and it was decided that it should be preserved as a Government plantation; that in 1854 Saloo told Pandojee that they would take it in partnership, but afterwards refused to share the land, of which he obtained the grant; upon which Pandojee complained. Saloo might have misconducted himself as Revenue Patel, or as tenant of the land, and he might have cajoled Pandojee, but the Court cannot find that he has fraudulently removed or kept from its owner property entrusted to his charge or disposal, even if he did all that Pandojee says he did to him; and the Court are compelled to inform the Magistrate that, while an ignorance of the English language might palliate his Deputy's mistake, the Court can find no excuse for his having so misconstrued the law.

The conviction and sentence are annulled, and the fine is to be repaid.*

* *Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.*—The fine has been repaid, as directed.

The Magistrate greatly regrets that the case was so ill prepared, but the offence was so flagrant and common a one, and one involving so much public injury, that the Magistrate was averse on that account to let the prisoner escape.

The fact of the destruction of the trees was a point of such notoriety, and so much beyond all question and doubt, that the Magistrate in review attributed less weight to the omission than he would under other

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1856 December 17. Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

AHMEDNUGGUR.

[Petitions of Madhowdas Gooroo Hureedas, Jumnadas Gooroo Amurdas, and four others, Convicts in the Ahmednuggur Jail. Referred to the Magistrate of Ahmednuggur, C. E. F. TYTLER, on the 26th November 1856, for Report.]

Failure to furnish Security for Good Behaviour.

F. S. Chapman, First Assistant Magistrate.

Prisoners.—Madhowdas Gooroo Hureedas, and five others.

Charge.—Suspicious and bad character.

Order by the First Assistant Magistrate.—Each to furnish a security in the sum of Company's Rs. 50, commutable to six months' imprisonment, for their future good behaviour for a period of five years, or in default to be imprisoned for that period without labour.

Petitions of Madhowdas Gooroo Hureedas, and five others.—[Representing themselves to be travelling Byrajees, inhabitants of Benares; that on their way from Rameshwur to Benares they were apprehended and required to furnish security for one year; that they were not Natives of this country, and therefore it was with difficulty that they could furnish security, and they were sentenced to one year's imprisonment without any cause, though they were willing to leave the Zillah, being poor mendicants travelling to visit holy places; they prayed therefore that they might be allowed to leave the Ahmednuggur Zillah.]

circumstances have done. Rs. 60 had been spent in their removal; the proof of their fraudulent removal was ample, but the papers relating thereto had unfortunately remained in another case.

The Magistrate does not mention these facts to palliate the error, but merely to explain what seems otherwise unintelligible.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate is to be informed that the Court regret the oversight which occurred, by which a notoriously guilty person has escaped the punishment due to his offence; but they are happy to find that the Magistrate sees the errors which have been committed, and feel sure they will not recur.

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AHMEDNUGGUR.

Failure to furnish Security for Good Behaviour.

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—The Magistrate is to be requested to explain why these men should not be expelled the Zillah.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate has the honour to explain that the question of expelling these men from the Zillah was duly considered at the time of demanding security; but it seemed very inexpedient to set loose on the country a gang of wandering highway robbers, who would merely renew their depredations on the first opportunity. It was with this view that they applied for expulsion.

The Commissioner of Police wrote to the Superintendent of Police, No. 488, dated 23rd April 1856, regarding them as follows:—

"In my opinion this is a case in which security should be demanded, and, failing it, these culprits should be imprisoned. On the expiration of their sentence they should be banished the Zillah."

The petitions are herewith returned.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate and Superintendent of Police are to be informed that they have no power to banish a man the Zillah except upon his failing to furnish security. That if the man has been imprisoned for want of security, and is released, he has undergone the penalty, and they cannot thereafter expel him. The petitioners should be expelled the Zillah; and if they return, the Magistrate may then imprison them previous to re-expelling them; and if they return again, he may flog them as well; but he must not first imprison them in default of security, and then expel them for the same. The order is therefore reversed, and the Magistrate directed to expel the petitioners should they fail in furnishing the requisite security.

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Present, William Edward Frere, Robert Keays, Puisne Judges.

AHMEDNUGGUR.

[Case No. 25 of the Criminal Return of the Magistrate of Ahmednuggur for September 1856. Tried by the District Deputy Magistrate, Krishnajee Wasoodave, on the 15th and 23rd September 1856. Confirmed by the Magistrate, C. E. F. Tytler, on the 25th September 1856. Proceedings certified, on the petition of the prisoners Gunoo wulud Bapoojee and Bhaoo wulud Sunkrojee.]

Misconduct as Police Officers.

Prisoners.—No. 1, Gunoo wulud Bapoojee, Koonbee, aged 55.

2, Govindrow wulud Kalojee, Muratha, aged 35.

3, Bhaoo wulud Sunkrojee, Koonbee, aged 30.

Charge.—Misconduct as Police Officers (Regulation XII. of 1827, Section VIII. Clause 1st); in having, on the 4th September 1856, (corresponding with Bhadrupud Shood 5th, Shuké 1778,) by day, at Moujé Padule, Talooka Ankola, of the Ahmednuggur Zillah, ill-treated by binding the hands of Bapoo Khatik and Gungaram wulud Trimbuka, and otherwise torturing them, while engaged in their capacity of Policemen in instituting an inquiry into a robbery which was alleged to have occurred at the lodging of the complainant, Kasumbhaee, omitting to mention in their report the fact of the discovery of a knife with hair attached to it, being a part of the property stolen, and reporting to their superiors as if no robbery had occurred.

Prisoners plead not guilty.

Krishnajee Wasoodave, District Deputy Magistrate.

C. E. F. Tytler, Magistrate.

Finding and Sentence by the District Deputy Magistrate, confirmed by the Magistrate.—Considering the circumstances of this case, it appears that Bapoo Khatik, having been apprehended on the slight suspicion of having in his possession a knife with hair attached to it, was, as is deposed to by him in his deposition (No. 4),

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in the presence of all the three prisoners, pinioned, hanged up, and beaten. This is supported by the Inquest Report (No. 7), which states that Bapoo's arms, as now seen, bear marks of injury received from the ill-treatment. The evidence produced is conclusive that Bapoo was undoubtedly hanged up. The prisoners Nos. 2 and 3 deny having taken any part in the above misdeed, but throw all blame upon prisoner No. 1. The witnesses also do not depose to these prisoners (Nos. 2 and 3) being present at the time of hanging, but the prisoner No. 3 acknowledges in his deposition (No. 17) his being present at the scene. Prisoners Nos. 2 and 3 state that they were in the temple, in the neighbourhood of which Khatik Bapoo was tortured in the sheepfold, and his groans (as deposed to by the witness No. 14) were heard in the temple. Such being the case, the two prisoners' pleas of ignorance are inadmissible.

Prisoners Nos. 2 and 3 made the reports (Nos. 1 and 2), in which they have not only not reported the true circumstances, but purposely set them forth in a very ambiguous manner; and this could not have been effected undoubtedly without the concurrence of all of them.

All these circumstances, therefore, combine to convict the prisoners of the crime with which they are charged. To prevent the Police from ill-treating the prisoners in such a manner, severe punishments have in several cases been awarded to the offenders, and Injunctions served repeatedly, but all this seems to have no effect upon them; and in order to deter these men from exercising undue severity towards suspected persons, it is incumbent upon the Magistrate, or upon those who discharge the Magisterial duties, to adopt still more stringent and precautionary measures.

The prisoners are therefore, in accordance with Regulation XII. of 1827, Section VIII. Clause 1st, sentenced as follows.

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Prisoner No. 1 (Gunoo wulud Bapoo)—who was so recently as the month of July 1856 tried for a similar offence in a case No. 13, and sentenced to pay a fine of Rs. 10, commutable to two months' imprisonment without hard labour—is, for his being the principal offender, and in consideration of his having been again brought up so soon after the above described offence, sentenced to undergo nine (9) months' imprisonment without hard labour.

Prisoner No. 2 (Govindrow Naik) to undergo six (6) months' imprisonment without labour; and prisoner No. 3 (Bhaoo Patel) to suffer four (4) months' imprisonment without hard labour.

These sentences are subject to the confirmation of the Magistrate. In the mean time the prisoners are made over to the custody of the Ahmednuggur Police Amuldar, and the witnesses are paid their 'batta,' and permitted to return to their homes, and the papers connected with the case recorded.

Resolution of the Sudder Foujdaree Adawlut.—The trial in this case has been very badly conducted. The Inquest Report and other papers have been recorded without being regularly proved, and witnesses are allowed to depose to facts without its being shown how they became acquainted with them. The Court do not think a torture case should have been tried at all by a District Deputy Magistrate. As, however, they do not think there is any doubt about the prisoners' guilt, they reject the petition.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

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KAIRA.

[Case No. 5 of the Calendar of the Kaira Sessions Court for 1856. Committed by the First Assistant Magistrate of Kaira, L. ASHBURNER, on the 6th October 1856. Tried by the Session Judge on Circuit, A. B. WARDEN, on the 4th, 5th, 6th, 8th, and 10th November 1856. Proceedings submitted to the Sudder Foujdaree Adawlut for confirmation.]

Prisoner.—Lal Meeabhaee, Musulman, aged 40.

Wilful Murder.

Charge.—Wilful murder; in having, on or about Saturday, 30th August 1856, (corresponding with Shrawun Wud 30th, Sumvut 1912,) in the town of Moundha, Talooka Moundha, Zillah Kaira, without justifiable or extenuating cause, deprived his wife Mendaboo of life, by cutting her throat with a knife, and stabbing her below the right shoulder with a dagger; prisoner thereby rendering himself amenable to the provisions of Regulation XIV. Section XXVI. Clause 1st, of 1827.

Prisoner pleads not guilty.

A. B. Warden, Session Judge.

Finding and Sentence by the Sessions Court.—The Inquest Report, which has been recorded as No. 4, and been proved by the evidence of witnesses Nos. 2 and 3 (Kaledas and Venktesh), shows that the deceased Mendaboo was murdered by having her throat cut. From the evidence of the witness No. 5 (Rusulboo) it appears that about two hours after daybreak she saw prisoner sitting inside his house near the door, and that his wife Mendaboo (the deceased), was also in the house at the time, and she heard the prisoner two or three times tell his wife to cook bread. This witness further deposed that about 11 A. M. she saw prisoner going quickly away, and he appeared to have come out from the back of his house, and about three or four hours afterwards she discovered the corpse of the deceased lying in the road at the back

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of the prisoner's house, and close to a 'tattee' which was lying on the ground, and which had been put up to fill a gap in the back wall of the prisoner's house. This witness stated before the Magisterial Authorities that she discovered the corpse immediately after she saw the prisoner going away from his house, and she also stated that she had heard the prisoner quarrelling with the deceased. The witness No. 6 (Dilsaheb) has deposed to having seen the prisoner two hours after daybreak sitting in the doorway of his house; she was at that time going to the bazar. On her return, in about an hour, she went and seated herself under a tree in front of her house, when she heard a noise at the back of the house, as if a person was breaking a tattee; on running round to the back she perceived the prisoner running away, and saw the deceased lying by the tattee above alluded to, which was on the ground. Before *the Superintendent* of Police this witness stated that *she had* previously heard the prisoner and his wife quarrelling, but before this Court she denied that she had heard them quarrelling. The witness No. 7 (Resumri), who lives at the back of the prisoner's house, has deposed that she heard the deceased call out "Bapré!" On going outside to ascertain the cause, she perceived the prisoner walking away, and he appeared to have got out at the back of his house; she saw the tattee lying on the ground, but denied having seen the corpse of the deceased until reminded that she had before the Superintendent of Police deposed to that effect. Now the evidence given by these women is not quite so satisfactory as could be wished; they evidently know more than they have deposed to, and what they have deposed to could not be elicited from them until 'mohsul' was put on them by the Magisterial Authorities. There is, however, other evidence, which, taken in connection with the testimony of the abovementioned women, proves the guilt of the prisoner.

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The Police Amuldar, immediately on hearing of the murder, hastened to the spot, and owing to the clue given by the mother of the deceased, at once set out in pursuit in the direction in which the prisoner was supposed to have gone. The Police Amuldar went along the high road, and the Havildar Madhowsing (witness No. 14), and the three Revenue Peons, Salabut (witness No. 13), Wusta, and Jooneed (witness No. 24), went across country. The Peon Salabut appears to have been the first who discovered the course taken by the prisoner, from gaps made in the hedges by prisoner cutting his way through some and pushing his way through others. The Pugee Jora (witness No. 15), however, also lays claim to having been the person who actually tracked the prisoner to his hiding-place by following up the footmarks, which he discovered within a short distance of the spot where the corpse was lying; but it is not of much consequence who first got upon the track of the prisoner; it is, however, clearly proved that the prisoner was found concealed in a tank, under some very thick foliage, and not easy of access. The evidence of the Peon Salabut (witness No. 13), and Havildar (witness No. 14), and the Police Amuldar (witness No. 21), proves that the dagger, knife, and a bag in which was a small piece of paper with some writing on it, were found in the tank where the prisoner was found concealed; the writing on the paper, owing to its having been immersed in water, is not legible, but the Mamlutdar has deposed that the writing when the paper was first dried was more distinct, and that he made a copy of as much as he could make out, and it appeared to be a memo. of wages, and prisoner's name was discernible. The prisoner denies all knowledge of the above articles, but the evidence of the father and mother of the deceased (witnesses Nos. 8 and 12), and of Nusrut (witness No. 11), prove that the knife and dagger belong to the prisoner. Although the prisoner

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denies them to be his, yet he has admitted that he is possessed of a knife and dagger, but is unable to show what has become of them. The description given by the prisoner of his knife and dagger, as far as it goes, tallies with that of the knife and dagger before the Court, with the exception that the handle of the dagger is made of blackwood and not of horn; the prisoner may have purposely given a wrong description of the handle. The Police Amuldar has deposed that the knife and dagger, when taken out of the tank, were both stained with blood; but it is a pity that he did not show the stains then and there to the Peons and get them to bear witness, or else have forwarded them at once to the Civil Surgeon for examination, whereas the Civil Surgeon (vide his evidence No. 25*) is now unable to swear positively to there having been blood on the dagger, although he feels tolerably certain of it. With regard to the knife, he has given it as his decided *opinion* that there was no blood on it when he examined it. Another error committed by the Police Amuldar was his omission to take the prisoner with him when he went to search the house, and also when he went to search for weapons in the place where the prisoner had been con-

* *Deposition of the Civil Surgeon.*—I, Ronald Bayne, aged 35 years, Christian religion, Civil Surgeon of Kaira, depose on oath that I have examined the knife and dagger now before the Court. On the knife I could not ascertain the presence of any blood, but on the dagger, if I could account for the absence of the red colour, I should say that I had certainly discovered a small quantity of blood. I ground this fact principally on the deposit produced by heating the filtered liquid got from washing the dagger in a little distilled water. I consider that the exposure of the blade of the dagger to the sun for any length of time would account for the absence of the red colour in the liquid after filtration. I cannot positively swear that there was blood on the dagger, as the colour that blood generally gives to water was absent after the liquid was filtered; but, on the other hand, it is impossible to account for a precipitate obtained by heating the filtered liquid save on the supposition that it contained blood.

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cealed. The Court, after having taken the Mamlutdar's evidence, pointed out to him his oversight in not having made the search in the prisoner's presence. Besides the fact of the prisoner having been seen making off from the scene of the murder, and his having been found concealed in a very out-of-the-way place, and the subsequent discovery of the knife and dagger, proved to be prisoner's property, in the identical place where the prisoner had been concealed, there is another circumstance which very much strengthens the evidence against him. The witness No. 9 (Wulee) saw prisoner and his wife (the deceased) in the house just before the door was shut from the inside; the evidence of the Police Amuldar and Peons proves that when they went to search the house they found the door fastened on the inside, and the evidence of the Peon Jooneed (witness No. 24) proves that he got in at the back of the house by the gap that had been made by some one having pushed down the tattee, and that he found that the chain of the door had been put up so that no one could possibly open it from the outside. The prisoner's story is that he went in search of his wife, and that he found her and her paramour Lal Bajoo, and Gulab Dowlut's daughter, in the house of Goolab Dowlut, and that he desired his wife to go home and cook his dinner, and she promised to do so. He then went outside and stood waiting a little while, when he saw Lal Bajoo come out; he thought that Lal Bajoo had come out to beat him; he therefore ran away and concealed himself near the tank. Hearing the Peons in pursuit, he mistook them for Lal Bajoo and partisans, and concealed himself in the water. This is a very unlikely story, for it cannot be believed that a man armed with a sword would be in such awful fright of another who had not even threatened him, and does not appear to have been even armed; moreover, the prisoner has not attempted to prove his story, and is unable to account for the door being fastened

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from the inside, or for the murder of his wife. The father and mother of the deceased have given evidence that the deceased ran away from the prisoner's house and returned to Moundha, and that the prisoner accused her of having robbed him. The mother exhibited a good deal of ill-feeling towards the prisoner while giving evidence, and has evidently exaggerated things. Although there was no eye-witness of the murder, the Court, upon due consideration of every circumstance connected with the case, is satisfied that the facts above mentioned prove that the deceased was murdered by her husband, the prisoner at the bar, with whom she does not appear to have been on good terms.

Prisoner is found guilty of wilful murder; in having, on or about Saturday, 30th August 1856, (corresponding with Shrawun Wud 30th, Sumvut 1912,) in the town of Moundha, Talooka Moundha, Zillah Kaira, *without* justifiable or extenuating cause, deprived his wife Mendaboo of life, by cutting her throat with a knife, and stabbing her below the right shoulder with a dagger.

After taking into consideration the nature of the offence proved against you, prisoner Lal Meeabhaee, and the extent of punishment allowed for the same by the provisions of Regulation XIV. Section XXVI. Clause 4th, of 1827, the sentence of the Court is that you, prisoner Lal Meeabhaee, be transported beyond seas for the term of your natural life. This sentence is, however, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

The Court considers that the zeal and energy displayed by Venaek Dewakur, Police Amuldar of Moundha, the Havildar Madhowsing, and Peons Salabut, Jooneed, and Wustajee most praiseworthy: but for their activity in setting out in immediate pursuit the prisoner would undoubtedly have escaped, and, even if ultimately apprehended, some important links in the chain of evidence would have been wanting. The Court offered to bestow

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pecuniary rewards on the Havildar Madhowsing and Peons Salabut and Jooneed, but they, in lieu of money, begged for promotion: the Court informed them that it felt much gratified at their preferring promotion, and would request the Magistrate to promote the Havildar to the situation of Jemedar, and the Peons Salabut and Jooneed to the situations of Havildar, on the occurrence of vacancies. The Peon Wustajee was not sent up to the Sessions Court, the evidence of the Havildar and Peon Salabut being considered sufficient; the Court however has no doubt that he would also prefer promotion to a pecuniary reward, and will therefore request the Magistrate to make him also a Havildar.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—I do not feel any doubt of the prisoner's guilt in this case, and should have considered the case proved by the evidence of Salabut Wulee and the District Police Officer Venaek and his Havildar Madhowsing. I therefore cannot understand what necessity there was for placing mohsul on some of the witnesses, which the District Police Officer Venaek says was done according to custom, and which I conclude was placed upon Rusulboo and the other woman whose depositions are dated the 27th September. The evidence of these women was, I may say, of no importance, for the case consists in a cry having been raised in the village that a woman had been murdered; footsteps were traced from thence to a tank, in which her husband was found concealing himself under the shrubs; he accounts for being there by declaring that he had had a dispute with his wife and her paramour Lal Bajoo, and that, hearing a disturbance in the village, he was afraid they were coming to assault him, so fled and concealed himself. There is nothing to corroborate this; and even if the women Rusulboo and others had not deposed to seeing him leave the spot, I should have been prepared to confirm the conviction, and a more severe sentence than the Session Judge has passed.

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R. Keays, Acting Puisne Judge.

Minute by Mr. Keays.—After a careful consideration of all the evidence in this case, I can come to no other conclusion than that the deceased was murdered by the prisoner at the bar. He was seen walking away from the corpse, was followed almost immediately by the Police Amuldar and Peons, and traced to the place where he was found concealed in the foliage of the trees overhanging a tank. He is then proved to having made a false statement regarding his dagger and knife, which were subsequently found in the tank where he was discovered hiding. He was also seen with his wife inside his house before he closed the door, and the doors of his house were fastened inside; and the tattee, by breaking down which he evidently effected his escape from the house, was broken down, having fallen on the outside. On the above evidence I consider it proved beyond a doubt that the prisoner was the murderer, and would confirm the conviction and sentence.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

The Magistrate is to be informed that placing mohsul upon a village is a most objectionable way of obtaining evidence, and that, had the proof in this case depended only upon the evidence so procured, the prisoner must have been discharged.

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Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 26 of the Criminal Return of the Magistrate of Ahmednuggur for September 1856. Tried by the Assistant Magistrate of Nassick, S. M. PELLY, on the 22nd, 23rd, and 24th September 1856. Confirmed by the First Assistant Magistrate in Charge at Ahmednuggur, F. S. CHAPMAN, on the 6th October 1856. Proceedings certified to the Sudder Foujdaree Adawlut, on the petition of the prisoners.]

Forcibly De-[...]oying and Injur-[...]he Property [...]ther person.

Prisoners.—Neetanund Bawa Gooroo Ramdas, Oodase, aged 30; and 20 others.

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Forcibly Destroying and Injuring the Property of another person.

Charge.—Forcibly destroying and injuring the property of another person (Regulation XIV. of 1827, Section XLII. Clause 2nd); they having, on the 4th September 1856, (Mitee Bhadrupud Shood 5th, Shuké 1778,) at Sinner, Talooka Sinner, Zillah Ahmednuggur, injured the field and destroyed the hedge belonging to complainant, Sukharam wulud Suntookram, and thereby occasioned a loss to him of about Rs. 46.

Prisoners severally plead not guilty.

S. M. Pelly, Assistant Magistrate.

Finding and Sentence by the Assistant Magistrate.—From the evidence recorded in this case, it appears that prisoner No. 1, a religious mendicant, stole some of the produce of complainant's field, on the 3rd September 1856, and that a partner of complainant having reported the theft to the Police Amuldar, prisoner No. 1, on the following morning, instigated several people to join him and destroy complainant's crop, as also the hedge which surrounded his field. There is abundant proof to show that the mischief was done, and that too by a large number of people; but it does not appear that personal violence was offered to any one, or that any resistance was made to the Police. Of the number engaged in the transaction only a few were accused, partly owing to the people who saw what was going on being friends of the parties engaged, and partly to the absence and misconduct of the Police during the time the work of destruction was being carried on. The Police Patel (witness No. 8) deposes that none of the Police Peons were on the spot until too late to save the field or recognise any of the parties. (This however was not the case.) He himself could only distinguish eight people out of the whole crowd.

The prisoners, in their defence, say that the witnesses for the prosecution have all of them been either bribed to testify against them, or do so from personal ill-feeling; but they can adduce no proof in support of their assertions. When first taken before the Police Amuldar, it is reported that they each and all declared they had no

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proof to offer in their defence; but afterwards, with very few exceptions, they adduced evidence to prove an *alibi*.

As they do not adduce any other proof, the following tabular statement is drawn up to show briefly how far each prisoner may be considered as implicated or otherwise:—

Numbers.	Names.	No. of Witnesses for Prosecution.	Do. for Defence.	Remarks.	Verdict.
1	Neetanund Bawa......	5	..	....	Guilty.
2	Rugho wulud Mukoonda.	5	2	These two witnesses depose to prisoner No. 2 being ill with fever.	Not guilty.
3	Tima wulud Gopala..	7	2	These witnesses do not support the defence.	Guilty.
4	Khundoo wulud Bala.	7	...	....	Guilty.
5	Gunga wulud Koosha.	4	2	Neither witness supports the defence.	*Ditto.*
6	Dhonda wulud Jeeva.	6	2	Ditto	*Ditto.*
7	Mansing wulud Ramsing.	7	2	Considerable discrepancies.	Ditto.
8	Khundo wulud Bhoola.	1	1	....	Not guilty.
9	Khundo wulud Trimbuka.	2	2	Discrepancies in defence.	Guilty.
10	Syed Hoosein wulud Ghose.	5	2	Quite unsupported ..	Ditto.
11	Nuroo wulud Nagoo.	2	2	Discrepancies	Ditto.
12	Bhikunsing wulud Suntooksing.	6	2	Ditto	Ditto.
13	Trimbuka wulud Wurjoo.	4	2	Ditto	Ditto.
14	Bhima wulud Wurjoo.	2	2	Both witnesses support defence.	Not guilty.
15	Anajee wulud Pillajee.	3	1	Not proved	Ditto.
16	Lado wulud Huree ...	1	2	Defence corroborated.	Ditto.
17	Pangia wulud Aba ...	3	...	....	Guilty.
18	Buyajee wulud Khundo.	1	1	These three prisoners being only identified by one man, who made a sweeping assertion that all the prisoners were present, without identifying individuals, the charge is not considered as proved.	Not guilty.
19	Dhonde wulud Rama.	1	1		
20	Gunga wulud Myajee.	1	1		
21	Mhataria wulud Sutwa.	2	1	Defence corroborated.	Ditto.

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Considering it highly probable that mistakes as to identity in so large a crowd might be made, none of those who were not recognised by more than one individual, or who could adduce sufficient proof, after making due allowance for probable errors in time, that they were elsewhere when the mischief was being effected, have been found guilty. Those against whom the verdict of guilty has been recorded are, in the opinion of the Assistant Magistrate, palpably so.

Prisoner No. 1, being the chief offender and instigator of the mischievous work, in which he was assisted by the others, deserves severe punishment. He is therefore sentenced to undergo six (6) months' imprisonment with hard labour in the Nassick Jail. At the expiration of this term he is to pay a fine of fifty (50) rupees, or undergo six (6) months' more imprisonment with hard labour. Further, at whatever time he may be released he is to find security for his good conduct, for the space of two (2) years, to the amount of one hundred (100) rupees, commutable in case of non-payment to twelve (12) months' imprisonment.

Prisoners Nos. 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, and 17 may be regarded as equally guilty one with another, and they are each therefore sentenced to undergo four (4) months' imprisonment with hard labour in the Nassick Jail. At the expiration of the above time they are each to pay a fine of ten (10) rupees, or, in default, to undergo one (1) month's more imprisonment with hard labour, and on release they are ordered each to find security for their good conduct, as directed for prisoner No. 1.

Though prisoners Nos. 2, 8, 14, 15, 16, 18, 19, 20, and 21 have not been convicted, there is sufficient evidence recorded against them to render it highly probable that they were actually engaged in the affair, and they are therefore each directed to find security for their future good conduct in the manner specified with regard to prisoner No. 1.

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The foregoing sentences of imprisonment and fine are awarded under Regulation XIV. of 1827, Section XLII. Clause 2nd, and the security is directed to be furnished under Regulation XII. of 1827, Sections XXV. and XXVII. Clause 1st.

The punishments are subject to the confirmation of the Magistrate of Ahmednuggur, under Act IV. of 1830, Clause 3rd.

The amount of forty-six (46) rupees, or as much of that sum as may be recovered from the prisoners, to be paid to complainant, under Regulation XII. of 1827, Section XIII. Clause 1st.

It appears that at the time the mischief was being done, the Police Amuldar was not at Sinner, but the head Karkoon was there, and though duly informed of what was being done, he did not go near the spot to attempt to apprehend the offenders. The Jemedar of Mahal Sebundee's Witoba and the Police Patel Krishnarow saw the people engaged in destroying the field, but did not attempt to apprehend any one, or even go near them to remonstrate. The Police Jemedar of Sinner, by name Sukharam, though informed of what was being done, went slowly towards the place, but made no attempt to arrest any one, or to save the property.

F. S. Chapman, First Assistant Magistrate.

Confirmation by the First Assistant Magistrate in Charge.—Confirmed.

The evidence in this case shows the Police Authorities at Sinner to have behaved with most culpable apathy.

A premeditated breach of the peace occurs in the daytime at the head quarters of the District Police, and yet not a single effort is made either by the Police Karkoon, the Jemedar, or a single member of the Force to apprehend the wrong-doers. Thus witness No. 3 deposes: "The Police Patel, the Jemedar, and I went to the field; no one attempted to stop the people." And again, witness No. 8 says: "The Police Jemedar and Mahal

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Peons went with me to the field when the people had left it."

In a case like the present, where the whole evidence for the prosecution depended on that adduced as to the personal identity of the prisoners, it was most essential they should if possible have been apprehended in the act. The Police, as has already been shown, failed to make the slightest effort so to arrest them. The consequence has been, that in addition to the bad general effect that must ensue from a parcel of men having been permitted, in the very teeth of the Authorities, to set all law and order at defiance, a number of doubtlessly guilty men have escaped.

The whole of this case shall be forwarded to the Superintendent of Police for inquiry.

W. E. Frere, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—I see no cause for interference with the Assistant Magistrate's decision in this case. The prisoners were all identified, and I do not see that any witnesses they desired were not examined. I observe that the Assistant Magistrate, in the schedule he has made in his finding, enters one more witness than I can find against every one of the prisoners; for instance, I only find that the witnesses Nos. 4, 5, 6, 7, 9, and 10 depose against the prisoners Tima (No. [illegible]) and Khundoo (No. 4), but the Assistant Magistrate enters seven against each, and I find my numbers correspond with those entered in the margin in pencil against the prisoners' names by the Magistrate. I conclude, on review, however, even against the prisoners Nos. 9 and 11 (Khundo and Nuroo), the evidence is, I think, sufficient, and the petitions may be rejected.

The prisoner No. 17 (Pangia), the trumpeter, ought, I think, to have had heavier punishment than the general rabble.

Resolution of the Sudder Foujdaree Adawlut.—The petitions of the prisoners are rejected.

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BELGAUM.

Murder; Instigating, Aiding, and Abetting in Murder; and Serious Assault, and Instigating, Aiding, and Abetting in the Commission of the Assault.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 102 of the Calendar of the Dharwar Sessions Court for 1856. Committed by the Third Assistant Magistrate, G. W. ELLIOT, on the 23rd July 1856. Tried by the Session Judge, A. W. JONES, on the 12th, 15th, 16th, 22nd, and 23rd September, and 2nd, 4th, and 6th October 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Session Judge.]

Prisoners.—No. 1, Dodmula bin Dodyelapa, Berud, aged 26.
2, Neelya bin Dodyelapa, Berud, aged 17.
3, Dodyelapa bin Honapa, Berud, aged 50.
4, Sunmula bin Sunyelapa, Berud, aged 20.
5, Ninga bin Balapa, Berud, aged 38.

Charge.—Against prisoners Nos. 1, 2, 3, and 4 (Dodmula, Neelya, Dodyelapa, and Sunmula) murder (Regulation XIV. A. D. 1827, Section XXVI. Clause 1st); in having, on Monday, the 28th April 1856, (corresponding with Chuitru Wud 8th, Shuké 1778,) between the hours of 5 and 7 P. M., in the field of Rama Ooda Naique, within the limits of Soonudkoopee, Mujré Wunoor, in the Sumpgaum Talooka, in the Belgaum Division of the Dharwar Zillah, without justifiable or extenuating cause, taken the life of Mahaninga bin Budwana, under the following circumstances:—

That they, prisoner No. 1 (Dodmula) with a sword, the prisoner No. 2 (Neelya) with a spear, the prisoner No. 3 (Dodyelapa) with a sword, and the prisoner No. 4 (Sunmula) with an iron bar or other instrument, did attack and wound the said Mahaninga, and Bheema, and Hunma, and Dodbalia, and that, in the course of this attack, the

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said Mahaninga received a wound on the left eye from the spear held by prisoner No. 2 (Neelya), and also one on the left side from the sword held by prisoner No. 1 (Dodmula), from the effects of which wounds he, the said Mahaninga, died on the following day.

Prisoner No. 5 (Ninga), under Regulation XIV. A. D. 1827, Section XXVI. Clause 1st, and Section I. Clause 5th, with instigating, aiding, and abetting in the commission of the aforementioned murder; in having, on the same date, brought from Soonudkoopee, Mujré of the village of Wunoor, in the Sumpgaum Talooka, in the Belgaum Division of the Dharwar Zillah, two swords, which he put into the hands of prisoners Nos. 1 and 3 (Dodmula and Dodyelapa), at the same time urging them on to the attack in which the said Mahaninga was killed; he, the prisoner No. 5 (Ninga), being present and looking on while the said crime was perpetrated.

And the prisoners Nos. 1, 2, 3, and 4 (Dodmula, Neelya, Dodyelapa, and Sunmula) are further charged, under Regulation XIV. A. D. 1827, Section XXIX. Clause 1st, with serious assault; in having, on the same date, and at the same place and time, wounded Bheemu Dundapoor on the left side of the back of the neck behind the ear, and Hunma Koogad on the back, buttock, and the back of his head, so severely as to endanger their lives, and also in having wounded Dodbalia on the left hand so seriously as to injure it permanently.

And prisoner No. 5 (Ninga) is also further charged, under Regulation XIV. A. D. 1827, Section XXIX. Clause 1st, and Section I. Clause 5th, with instigating, aiding, and abetting in the commission of this assault; in having, on the same date, brought from the Mujré Soonudkoopee of Wunoor, in the Sumpgaum Talooka, in the Belgaum Division of the Dharwar Zillah, two swords, which he put into the hands of the prisoners Nos. 1 and 3 (Dodmula and Dodyelapa), at the same

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A. W. Jones, Session Judge.

time urging them on to the attack in which the assault took place.

Finding and Sentence by the Sessions Court.—In this case the prisoners Nos. 1, 2, 3, and 4 (Dodmula, Neelya, Dodyelapa, and Sunmula) are charged with murder and serious assault, and prisoner No. 5 (Ninga) with instigating, aiding, and abetting therein; and all plead not guilty.

It appears that two small parties of persons of the village of Gujbinhal, in all six in number, went, on Monday the 28th April, to drink toddy at some date-trees in the jungle of the village at Soonudkoopee, at 4 in the evening. The prisoners Nos. 1, 3, and 5 (Dodmula, Dodyelapa, and Ninga, with the mistress of the prisoner No. 3 (Dodyelapa), came there, and a quarrel arose about the borrowing of a drinking cup between this woman and the complainant Bheema, in which the men of both parties joined, and a scuffle ensued, in which the three prisoners had the worst; and first the prisoner No. 5 (Ninga) made off towards the village, and then Busia, the liquor contractor's servant, who was in charge of the trees, interfered and separated the parties, and desired them to be off, on which both parties did so towards their own villages.

This is proved by the evidence of all the complainants, a cultivator of Soonudkoopee who happened to be near, and by Busia the servant of the liquor contractor.

It then appears that the prisoners Nos. 1 and 3 (Dodmula and Dodyelapa), on their way home, were joined by prisoner No. 5 (Ninga), who brought out two swords for them, and prisoners Nos. 2 and 4 (Neelya and Sunmula), the former of whom had a spear and the latter a stick or bar of iron, and that the first four prisoners then, urged on by prisoner No. 5 (Ninga), followed and caught up the six men of Gujbinhal, with whom they had previously had the quarrel described above, and at

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once attacked them, wounding the complainant Bheema severely on the neck, his brother Mahaninga (who came up to his assistance) across the stomach, Hunma on the back and buttock, and one Balia bin Balia on the hand, striking off a joint of one of his fingers; and Mahaninga, the most severely wounded of the four, died on the following morning.

The Inquest Report, proved before the Court, shows that the deceased Mahaninga was killed by a severe wound right across the stomach, and that there was another wound (such as would be caused by the thrust of a spear) on his forehead.

The scars on the persons of Bheema, Hunma, and Balia sufficiently show where they were wounded.

Prisoner No. 1 (Dodmula) denies the charge, and declares that he was employed by Appa Shastree in picking mangoes, and that he fell from a tree and hurt himself, and that this caused the blood on his clothes and the mark of a blow on his shoulder which were observed when he was arrested. But Appa Shastree denies having employed him in the way asserted, and the Session Judge is of opinion, therefore, that the evidence is sufficient to warrant his conviction.

Prisoner No. 2 (Neelya) is shown to have confessed the crime in detail before the Joint Police Officer and the Police Amuldar of Sumpgaum within two days of the occurrence, and, though he denied this confession before the Assistant Magistrate and the Court, the Session Judge does not doubt it was given voluntarily, as stated and supported by the other evidence. It is sufficient to warrant his conviction.

Prisoner No. 3 stated before the Joint Police Officer and the Police Amuldar of Sumpgaum that he was guarding the toddy-trees of his village for the liquor contractor during the night, and that some people came to steal liquor from them and threw stones at him, and

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that he therefore attacked them and cut some one of them down, and that this accounted for the blood on his sword and his clothes.

It is shown that he came and told this story to the Police Patel of Wunoor, under whom the hamlet he lives in is, during the night of the 28th April, accompanied by prisoner No. 5 (Ninga). He totally denied the previous quarrel with the Gujbinhal people at the toddy-grove, as well as the subsequent attack on them; and he referred, as proof of his story of having been employed to watch these trees, to Busia, the servant of the liquor contractor, and to the Police Patel and Koolkurnee of Wunoor, and one Sewlingapa, through whom he said he had been thus employed; but every one of these persons denied that they knew of his having been thus engaged, and the last denied he had ever engaged him.

A witness (No. 10) states that he heard this prisoner declare to a person at the Chowree that he intended to take the blame of this assault on himself, and, whatever may be the worth of his evidence, the Session Judge has no doubt the prisoner, who is the father of prisoners Nos. 1 and 2, and the uncle of prisoner No. 4 (Sunmula), has made this defence with this object.

And considering the direct evidence as to his participation in the first quarrel and the subsequent assault, and the failure of his defence, the Session Judge is of opinion he may be convicted of the murder and assault.

The prisoner No. 4 (Sunmula) is shown to have confessed that he accompanied the prisoners Nos. 2 and 5 (Neelya and Ninga) when they went off with weapons to join the other two prisoners, and that he was with the prisoners Nos. 1, 2, and 3 (Dodmula, Neelya, and Dodyelapa) when they assaulted the complainants. He states that he was not armed, and had no stick; but the witnesses Nos. 2, 6, and 10 speak to his having either a stick or a bar of iron, and complainant (No. 9) deposes

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he was struck by him with an iron bar. The Session Judge is therefore of opinion that the evidence is sufficient for his conviction of the murder and assault.

The prisoner No. 5 (Ninga) denies having been at the date-grove when the first quarrel took place, as well as having brought the swords and having aided or been present at the assault.

It is, however, clearly proved by the complainants and the liquor contractor's servant that he was present with the prisoners Nos. 1 and 3 (Dodmula and Dodyelapa) at the first quarrel at the date-grove, and all the complainants declare he came down to the nulla, on the other side of which they were attacked, and called out and urged on the other prisoners; and witness No. 10 declares he saw him bring down two swords to a small temple a few paces on the Soonudkoopee side of the nulla, and there give them to the prisoners Nos. 1 and 3 (Dodmula and Dodyelapa), as described also in the confessions of the two young prisoners (Neelya and Sunmula). The Session Judge therefore convicts the prisoner Ninga of instigating and aiding and abetting in the crimes of murder and assault as charged.

The Session Judge believes the prisoner might have been charged on this evidence with the murder, and that as the wounds inflicted on the complainants Bheema and Hunma were certainly very severe, the second charge should have been "attempt to commit murder"; for the interval between the quarrel and the assault, and the weapons used against unarmed persons, make the killing of Mahaninga an undoubted murder.

The prisoners Nos. 1, 2, 3, and 4 (Dodmula, Neelya, Dodyelapa, and Sunmula) are convicted of murder, and serious assault; in having, on Monday, the 28th April 1856, (corresponding with Chuitru Wud 8th, Shuké 1778,) between the hours of 5 and 7 P. M., in the field of Rama Ooda Naique, within the limits of Soonudkoo-

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Murder; Instigating, Aiding, and Abetting in Murder; and Serious Assault, and Instigating, Aiding, and Abetting in the Commission of the Assault.

pee, Mujré of Wunoor, in the Sumpgaum Talooka, in the Belgaum Division of the Dharwar Zillah, without justifiable or extenuating cause, taken the life of Mahaninga bin Budwana, under the following circumstances:—That they, *i. e.* the prisoner No. 1 (Dodmula) with a sword, the prisoner No. 2 (Neelya) with a spear, the prisoner No. 3 (Dodyelapa) with a sword, and the prisoner No. 4 (Sunmula) with an iron bar or other instrument, did attack and wound the said Mahaninga, and Bheema, and Hunma, and Dodbalia, and that in the course of this attack the said Mahaninga received a wound on the left eye from the spear held by prisoner No. 2 (Neelya), and also one on the left side from the sword held by prisoner No. 1 (Dodmula), from the effects of which wounds he, the said Mahaninga, died on the following day; and in having, on the same date and at the same place and time, wounded Bheema Dundapoor on the left side of the back of the neck behind the ear, and Hunma Koogad on the back, buttock, and the back of his head, so severely as to endanger their lives, and also in having wounded Dodbalia on the left hand so seriously as to injure it permanently.

Prisoner No. 5 (Ninga) with instigating, aiding, and abetting in the commission of the abovementioned offences; in having, on the same date, brought from Soonudkoopee, Mujré of the village of Wunoor, in the Sumpgaum Talooka, in the Belgaum Division of the Dharwar Zillah, two swords, which he put into the hands of prisoners Nos. 1 and 3 (Dodmula and Dodyelapa), at the same time urging them on to the attack in which the said Mahaninga was killed, he, the prisoner No. 5 (Ninga) being present and looking on while the said crime was perpetrated; and in having, on the same date, brought from the Mujré Soonudkoopee of Wunoor, in the Sumpgaum Talooka, in the Belgaum Division of the Dharwar Zillah, two swords, which he put into the hands

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of the prisoners Nos. 1 and 3 (Dodmula and Dodyelapa), at the same time urging them on to the attack in which the assault took place.

And after considering the nature of the crimes committed, and the punishments assigned thereto in Regulation XIV. of 1827, Section XXVI. Clause 4th, Section XXIX. Clause 1st, and Section I. Clause 5th, the following sentence is passed:—

That you, Dodmula, Neelya, Dodyelapa, Sunmula, and Ninga be transported across the seas for the term of your natural lives. Subject to the confirmation of the Sudder Foujdaree Adawlut.

Letter from the Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to forward, for the confirmation of the Judges of the Sudder Foujdaree Adawlut, counterpart of my proceedings in the above case, wherein Dodmula bin Dodyelapa, Neelya bin Dodyelapa, Dodyelapa bin Hunapa, Sunmula bin Sunyelapa, and Ninga bin Balapa have been convicted, the first four of murder and serious assault, and the last of instigating, aiding, and abetting in the commission of the above-mentioned offences, and sentenced severally to be transported across the seas for the term of their natural lives.

In case the conviction of these prisoners is confirmed, I beg respectfully to recommend the prisoners Neelya and Sunmula for a mitigation of punishment on account of their youth, and because I believe the punishment of their elder brother and uncle will be sufficient as an example to others, and as a warning to them.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence are confirmed.

The Court cannot concur with the Session Judge in recommending a mitigation of the sentence on Neelya. He showed so much malice in striking Mahaninga after the others had wounded him so severely, that they do not think he deserves any mercy.

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The Court consent to the sentence on Sunmula being mitigated.

All the prisoners should have been charged with murder; they were all so actively concerned in the affray, that they were all equally obnoxious to that charge.

The witness Roodrapa (No. 14) says there is an order that if a person is caught taking away property he may be cut down. The Court therefore direct that a reference be made to the Magistrate to ascertain what is the order the witness refers to, or whether any order is in existence in the Belgaum Collectorate which will bear that interpretation.

The case of Sunmula is to be laid before Government, with a request that, in compliance with the Session Judge's recommendation, the sentence passed upon him be mitigated to three years' imprisonment with hard labour and six months' solitary confinement.

Resolution of Government.—That in accordance with the recommendation of the Judges of the Sudder Foujdaree Adawlut, the sentence of transportation for life passed on Sunmula bin Sunyelapa be mitigated to three years' imprisonment with hard labour, and solitary confinement for six months.

Resolution of the Sudder Foujdaree Adawlut.—Warrant to be issued.

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AHMEDNUGGUR.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Petition of Sutwa wulud Khundo, a Convict in the Ahmednuggur Jail, to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Ahmednuggur, C. E. F. TYTLER, on the 26th November 1856, for Report.]

Suspicious and Bad Character.

J. W. Henry, Assistant Magistrate.

Prisoner.—Sutwa wulud Khundo.

Charge.—Suspicious and bad character.

Order by the Assistant Magistrate.—To furnish a security in the sum of Co.'s Rs. 500, commutable to six

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Suspicious and Bad Character.

months' imprisonment, for his future good conduct, for the period of one year, or in default to be imprisoned for that period without labour, and on his release to be returned to the Assistant Magistrate for precautionary measures.

Petition of Sutwa wulud Khundo to the Sudder Foujdaree Adawlut.—[Praying that the order for his imprisonment might be annulled.]

Precept issued to the Magistrate.—The Magistrate is to be requested to report what suspicions there are against petitioner, and whether he is to find security for five years as in petition, or for one as in the Register forwarded from the Sessions Court.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—The Magistrate has the honour to report that petitioner was concerned in a very serious gang robbery at Khirde in 1845. In the same year he was again apprehended by Captain Hervey, with other Kykarees of notorious character, and detained by that Officer until ordered to be released by the Sudder Foujdaree Adawlut. He then took to making counterfeit gold out of brass and other metals, doing so much mischief to innocent people that the Superintendent of Police sent him to the Assistant Superintendent of Thuggee at Belgaum. That Officer pronounced him to be of such a bad character, and connected with so many notorious dacoits and coin-melters and counterfeitors, that it became necessary for the benefit of the public that petitioner should furnish good security for his future good conduct.

As stated in the Register forwarded to the Sudder Foujdaree Adawlut by the Sessions Court, petitioner was called on to furnish security for one year only.

The petition is returned.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate is to be informed that from the account he gives of this man, who is not suspected of any act of

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Suspicious and Bad Character.

violence, it would appear that of mere imprisonment nothing short of imprisonment for life will ever suffice, and it would seem as if the Assistant Magistrate had some such object in view, for he directs, after the prisoner has been in Jail for precautionary measures, that he should be again returned to him for the same purpose. If the petitioner really is the character the Superintendent of Police suspects him to be, a little vigilance on the part of the Police would ensure his detection in some offence, for which he might receive a punishment which the Court hope would be reformatory. They, therefore, seeing that no personal violence is to be apprehended from his discharge, and no advantage is likely to arise from his detention, annul the order for his furnishing security, and direct his release.

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KAIRA.

Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Petition of Runchorlal Chotalal to the Sudder Foujdaree Adawlut. Referred to the Magistrate of Kaira, J. R. MORGAN, on the 5th November 1856, for Report.]

[See pages 201 to 205, Vol. VI., for previous proceedings in this case.]

Forgery.

Petition from Runchorlal Chotalal to the Sudder Foujdaree Adawlut.—[Praying for an order to the Magistrate to receive certain 'daklas' in the complaint lodged by the petitioner, he having refused to do so.]

Precept issued by the Sudder Foujdaree Adawlut to the Magistrate.—You are hereby requested to report upon the matter set forth in the accompanying petition, presented to this Court by Runchorlal Chotalal, returning this Precept duly executed, or show good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, within ten days after its receipt.

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Forgery.

You are further desired to return the said petition with this Precept.

Return by the Magistrate to the Precept of the Sudder Foujdaree Adawlut.—In returning this Precept duly executed, the Magistrate of Kaira has the honour to refer the Judges of the Court of Sudder Foujdaree Adawlut to the Resolution of Government of the 14th January 1856, forwarded with his reply, No. 604, of the 22nd instant, to Precept No. 1025, of the 6th idem, from which it will be seen that the petitioner was ordered to be tried by the Political Agent in the Rewa Kanta, with others, on a charge of conspiracy, and that it is in connection with the inquiry and papers recorded in a criminal case before the Political Agent that the petitioner requires the Magistrate's assistance.

On receipt of the extract from the proceedings of the Sudder Foujdaree Adawlut dated the 13th August last, the Magistrate begs to state that he called upon the petitioner to distinctly state the charges he brought against parties in this Zillah, and what evidence he had in support thereof; and after taking his deposition on solemn affirmation, copy of which is herewith transmitted, the charges being so vague, the petitioner only speaking by hearsay, and being unsupported by evidence, the Magistrate was of opinion that the charges were not in any way made tangible by him, and he therefore declined to make further inquiry.

The Magistrate begs to state that the whole of the papers of inquiry made in this Zillah regarding the petition, alluded to in the deposition of the petitioner, were transmitted to the Political Agent on Government directing that the inquiry was to be made by this Officer.

The Magistrate at the same time begs to suggest whether it would not be the correct procedure for the petitioner to apply to Government to cause inquiry to be made before the Political Agent into any matters con-

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KAIRA.

Forgery.

nected with the inquiry directed to take place before the above Authority, when, should it appear that parties in this Zillah have been guilty of any offence against the Regulations, they could be arraigned on such before the Magisterial Authorities of this Zillah, on the requisition of the Political Agent.

Resolution of the Sudder Foujdaree Adawlut.—The Magistrate is to be informed that he has already been instructed that he cannot decline to inquire into a charge within his jurisdiction to dispose of, and that an application to the Government, or the Political Agent in a neighbouring State, cannot give him jurisdiction if he has it not; that the Court cannot anticipate any objection on the part of Government to his doing his duty according to law; and that, if he has reason to believe that, as the petitioner asserts, a person within his jurisdiction has committed an offence, he ought to proceed as the Regulations direct, and if he does not believe that there are grounds for the accusation, he is, of course, justified in dismissing the charge.

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COLABA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Notice issued by the Joint Magistrate of Colaba, L. REID, and referred to the Sudder Foujdaree Adawlut on the 13th December 1856.]

Notice by the Joint Magistrate.

Notice under Regulation XII. of 1827, *Section XIX. Clause 2nd.*—Whereas the public are allowed, under certain restrictions, to cut firewood in the several forests within the Colaba Joint Magistracy, and as this practice has been abused by fruit and other descriptions of valuable timber trees being wantonly destroyed, by having large branches lopped off, or being otherwise mutilated and charred: Notice is hereby given, that all persons are strictly prohibited from cutting down any description of

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COLABA.

Notice by the Joint Magistrate.

trees without previous permission had and obtained, or injuring them in the manner above stated.

This restriction does not apply to 'katkias' or small branches as can be broken off by the hand or cut with the 'koéta' or bill-hook, or to wood in general as forms the 'hath molees' sold in the bazar, which may be removed as heretofore.

Any person acting contrary to this Proclamation will be punished according to law.

Letter from the Joint Magistrate to the Registrar of the Sudder Foujdaree Adawlut.—In compliance with the provisions of Clause 6th, Section XIX. Regulation XII. of 1827, I have the honour to forward to the Court of Sudder Foujdaree Adawlut copy and translation of an Injunction this day issued by me.

This course has been rendered necessary by the wanton disregard manifested by the people for the general conservation of the forest tracts round their villages, which it is the express wish and interest of Government to preserve, and which are in a fair way of being cleared and destroyed, without any corresponding benefit arising in the reclaiming of the soil or increase of cultivation. There is the less excuse for the present wanton mischief, in that there is always an abundant supply of brush and underwood sufficient for the purposes of fuel, and to provide for a considerable retail trade in the larger towns, as Mhar, Penn, Alibaugh, &c.

Resolution of the Sudder Foujdaree Adawlut.—To be recorded.

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TANNA.

Present, { WILLIAM EDWARD FRERE, ROBERT KEAYS, } Puisne Judges.

[Case No. 74 of the Calendar of the Tanna Sessions Court for 1856. Committed by the Acting Deputy Magistrate, DADOBA PANDOORUNG, on the 20th August 1856. Tried by the Assistant Session Judge, J. WARDEN, on the 2nd, 4th, and 5th September 1856. Reviewed by the Acting Session Judge, H. P. ST.G. TUCKER, on the 20th, 23rd, 24th, and 25th September 1856. Proceedings submitted to the Sudder Foujdaree Adawlut on the petition of the prisoners Nuthoo Bhewjee, Alee wulud Aloo, Shek Hosan wulad Shek Abdula, and Veerjee wulud Valee.]

Gang Robbery by Night, with Force; Aiding and Abetting in Gang Robbery; and Concealment of Gang Robbery after the Fact.

Prisoners.—Nuthoo Bhewjee, Bhatia, aged 28, and 11 others.

Charge.—Against prisoners Nos. 1, 2, 4, 5, 6, 7, and 8, gang robbery by night, with force (Regulation XIV. Section XXXVII. Clause 1st, of 1827); in that, *on 23rd* July 1856, (Ashad Wud 6th, Sumvut 1778,) *near Moo*lond Cha Padu Nowghur, Talooka Salsette, Zillah Tanna, at night, in a creek called Dewlachee Khadee, they did forcibly and secretly carry away from two cotton boats lying at anchor, altogether twenty-six maunds of cotton, valued at Rs. 78, of which ten maunds, to the value of Rs. 54, belonged to Wardhman Poonsee, and eight maunds, valued at Rs. 24, to Dhunjee Ibjee, merchant of Bombay.

Against prisoners Nos. 9, 10, and 11, aiding and abetting in gang robbery (Regulation XIV. Section I. Clause 5th); in that, on the abovementioned date, at about 7 o'clock A. M., they did assemble in the house of Ibrahim Thawar (prisoner No. 9), and plan the abovementioned gang robbery.

Against prisoners Nos. 3 and 12, concealment of gang robbery after the fact (Regulation XIV. Section I. Clause 5th, of 1827); in that, on the abovementioned date, they, being aware that the robbery had taken place, did

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TANNA.

Gang Robbery by Night, with Force; Aiding and Abetting in Gang Robbery; and Concealment of Gang Robbery after the Fact.

J. Warden, Acting Assistant Session Judge.

purposely avoid giving information to the Police, either at Tanna or Bombay.

Before commencing with the case, the Court, in accordance with Interpretation on Regulation XII. Section XXXIV. offered a pardon to prisoner No. 1 (Nuthoo), on condition that he would disclose the circumstances of the robbery, but he has declined, stating that he knows nothing about it.

Finding and Sentence by the Sessions Court.—The seven prisoners, Nuthoo (No. 1), Alee (No. 2), Veerjee (No. 4), Kasum (No. 5), Shimgia (No. 6), Shinwar (No. 7), and Jooja (No. 8) are charged with gang robbery by night, accompanied with force, and plead not guilty. The principal evidence against these prisoners is that given by the approver Ludboodeen, but for whom the robbery would probably never have come to light. It will be necessary, for the most part, to consider the evidence against each prisoner in detail.

Ludboodeen states that, having gone at the request of Alee (prisoner No. 2) into the house of Ibrahim (prisoner No. 9), he there saw, among other persons, Nuthoo (prisoner No. 1), who was planning with the others an attempt upon two cotton boats; he then accompanied some of the other prisoners who were assembled and Ludboodeen on board two boats, in which they steered to two cotton boats, and took from thence seven bags full of cotton. Nuthoo is not accused by Ludboodeen of having been actually engaged in extracting the cotton, but he states that he was participating in the robbery, and encouraging the others by his presence on board the cotton boat, and that he assisted in carrying away the cotton from the cotton boats to the shore. Ludboodeen makes no further mention of him; but Khoosal (witness No. 16) deposes that when the cotton had been seized by the Police he met Nuthoo (prisoner No. 1) at the house of a broker in Bombay, and heard him say that he would

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go down to suborn witnesses at Tanna with regard to some stolen cotton which had fallen into the hands of the Police; he also, witness deposes, told him and the broker to give security for, and obtain the release of two persons, called Alee and Sonoo, who he stated were with the carts, and witness found the carts and these two persons in the Police Office exactly as Nuthoo had said. This much of Khoosal's deposition is not corroborated by any witness, but it is proved that, on his description, Nuthoo was apprehended by the Foujdar of Tanna, before whom an investigation took place, in the course of which Nuthoo stated that he had gone to Tanna on his own affairs, and had had nothing to do with the robbery or with any attempt to suborn evidence at Tanna, but he did not produce a single witness to refute the charge against him.

According to Ludboodeen, the evidence against Alee (prisoner No. 2) is very strong; he was present at Ibrahim Thawar's house, joining in the plan for robbing the cotton boats, and was one of those actually engaged in perpetrating the robbery; he was at this time recognised by Soodkia (witness No. 3), who also saw him in the act of robbing one of the cotton boats; he then, Ludboodeen states, landed the cotton at a village called Nowghur, where he and Ludboodeen called up Changoo (witness No. 17) the Patel, and consigned the cotton to him till the next day. Changoo corroborates this account, and adds that the next day he came and paid him Rs. 4½, and took away the cotton. There is no doubt from the evidence, and from the prisoner's own account, that he accompanied this cotton with Ludboodeen into Bombay, where he was apprehended, and the cotton in the carts identified by Wardhman Poonsee (witness No. 8), and Dhunjee Ibjee (witness No. 9), and their agents (witnesses Nos. 10, 11, and 12). In his defence the prisoner admits that he was at the house of Ibrahim Thawar (prisoner No. 9) on the day in question, but denies that

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any one then talked of robbing any cotton boats, or that he was engaged in any such robbery. He states that Ludboodeen asked him to accompany him to Bombay with some cotton which he was taking for Nuthoo Moorar, and that he did so. He adds that he was asleep in his house on the night when the robbery took place, but before the Foujdar he did not bring forward a single witness to prove this, and the only witness whom he called before the Deputy Magistrate professed to know nothing about him or his whereabouts.

Of Veerjee (prisoner No. 4), Ludboodeen states that he was among those who were present at the house of Ibrahim Thawar planning the robbery, and that he saw him engaged in taking cotton from the 'pudows' and taking it to the shore, where he was also recognised by Changoo (witness No. 17), who stated that he was among those who brought the cotton to him, and that he came with Alee next day and paid Changoo Rs. 4½, and took away the cotton. Gunoo (witness No. 18) and Tookaram (witness No. 19) state that he engaged carts of them at the railway station, to go to Bombay with the cotton, and came the same evening to see if the carts were ready, and Ludboodeen mentions that he told him that he had engaged these carts. Prisoner, in reply, denies that he planned or perpetrated any robbery, or that he was at the house of Ibrahim Thawar on the day in question, or that he paid any money to Changoo. He states that he was told by Ludboodeen to engage two carts, and that he did so of Gunoo and Tookaram. He also offers to bring forward witnesses to prove that he was not present at the robbery; but he did not state before the Foujdar or the Deputy Magistrate that he had any witnesses to produce.

Kasum wulud Ibrahim (prisoner No. 5) was, Ludboodeen states, at the house of Ibrahim Thawar, and was also engaged in breaking open and taking cotton from the

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bales in both the cotton boats. Soodkia (witness No. 13) also deposes to having recognised him taking cotton from the "Yeshwuntee" cotton boat. Prisoner in reply distinctly denies the charge, and offers to prove that his father Ibrahim Thawar (prisoner No. 9) and Ludboodeen are at enmity, because his father once informed against him. He did not mention this circumstance before.

The prisoners Shimgia (No. 6), Shinwar (No. 7), and Jooja (No. 8) made confessions, witnessed and signed by witnesses Nos. 21 and 22, before the Foujdar, that they had been engaged in the robbery by conveying Lukmidas and others to the cotton boats, and receiving the cotton into their boats and conveying it to the shore. Lukmidas also deposes that they joined them at the bunder, and were with them till the cotton was landed. This confession they deny both before the Deputy Magistrate and the Court, but they do not substitute *any other* account, or give any reason for having made a *false* confession before the Foujdar.

The Court, on the above evidence, considers that prisoners No. 1 (Nathoo), No. 2 (Alee), No. 4 (Veerjee), and No. 5 (Kasum) are proved to have been actually engaged in the robbery of the cotton boats, and prisoners No. 6 (Shimgia), No. 7 (Shinwar), and No. 8 (Jooja) to have countenanced its perpetration, in such a manner that they are guilty of robbery. These seven prisoners are therefore convicted of gang robbery at night, accompanied with force.

The prisoners No. 9 (Ibrahim), No. 10 (Gopal), and No. 11 (Kasoo) are charged with aiding and abetting in gang robbery, and plead not guilty. The two first of these prisoners were, according to Ludboodeen, present at the house of Ibrahim Thawar, where they urged the robbery; they were also heard by Khoosal (witness No 6) to say that some stolen cotton had been found by the Police, and they would go to Tanna and suborn

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witnesses, and they were apprehended in Tanna the same night on Khoosal's description. Ibrahim (prisoner No. 9), in his defence, admits that he went to Bombay on hearing that the cotton had been seized by the Police, but states that he went to assist the Police in securing the robbers, and that there he met with two other prisoners by accident, but of this he does not offer the slightest proof. He states that four witnesses (whom he knows) would prove that he was at Dhysur, and not at Ibrahim Thawar's house, on the night of the 23rd. He did not, however, mention these witnesses to the Foujdar. Gopal (prisoner No. 10) states that he went to Bombay to meet a Shroff, and went to Lukmidas because his companion Nuthoo had business there. He denies that he was at the house of Ibrahim Thawar. He has nothing, however, but his bare assertion to show. These two prisoners are, on the evidence, shown to have been accessaries both before and after the fact. They are accordingly convicted of aiding and abetting in gang robbery. Regarding Kasoo (prisoner No. 11) Ludboodeen merely states that he was at the house of Ibrahim Thawar on the first occasion, and that after that he went to Dhysur. Prisoner states that he was at Dhysur on both occasions. The proof against this prisoner is not sufficient for a conviction.

Shek Hosan (prisoner No. 3) and Sonoo (prisoner No. 12) are charged with concealment of gang robbery after the fact. Of these, Shek Hosan, who is the Tindal of the "Yeshwuntee," is said by Ludboodeen and other witnesses to have been present when the robbery was committed, and to have refrained from interfering on a hint from Ludboodeen. This much Hosan himself admits, but he states that he had no opportunity of reporting the matter to any one. Wardhman Poonsee (witness No. 8), however, states that he questioned him, and he gave no satisfactory answer; and he made no revelations

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before the Superintendent of Police in Bombay. He is convicted of concealment of gang robbery after the fact. Prisoner No. 12 (Sonoo) is shown by the evidence to have engaged carts of Gunoo and Tookaram (witnesses Nos. 18 and 19), and to have joined them on the road and gone with them and the cotton to Bombay, where he was apprehended with the rest. He is also mentioned in the pass (No. 20). He himself states that he wanted to see his brother in Bombay, missed the train, and was therefore glad to accept an offer of a lift in the carts which was made to him by Ludboodeen. However this may be, the Court does not consider it clear that he had any guilty knowledge, and therefore the charge of concealment of gang robbery is not brought home to him.

The evidence for the prosecution in this case is very clear, and the witnesses corroborate each other in a remarkable manner. The defence set up by all the *prisoners*, except Hosan (prisoner No. 3), is most vague, and does not tend in any way to refute the charges. Hosan's account of the robbery corroborates Ludboodeen's story. No less than twenty-nine witnesses have been named by the Vakeels for the defence, but as no mention was made of them to the Foujdar, and as the Vakeels refused to mention either to the Deputy Magistrate (No. 35), or to the Court, what reasons they had for calling them, there seems no sufficient reason for requiring their presence.

In passing sentence, the frequency of this crime, and the slight chance that there usually is of discovering the offenders, render it necessary to punish severely whenever an opportunity occurs.

Sentence.—The prisoners Nuthoo Bhewjee (No. 1), Alee wulud Aloo (No. 2), Veerjee wulud Valee (No. 4), and Kasum wulud Ibrahim (No. 5) are sentenced, under Regulation XIV. Section XXXVII. Clause 1st, of 1827, to imprisonment with hard labour for four (4) years.

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This sentence is subject to the confirmation of the Session Judge, as is explained to the prisoners.

The prisoners Shimgia bin Fukeera (No. 6), Shinwar bin Ittoor (No. 7), and Jooja bin Posha (No. 8) are sentenced, under the same Regulation, to imprisonment, with hard labour, for two (2) years.

The prisoners Ibrahim Thawar (No. 9), Gopal Ramjee (No. 10), and Shek Hosan wulud Shek Abdula (No. 3) are sentenced, under the same Regulation, Section, and Clause, and Section I. Clause 5th, to imprisonment with hard labour for two (2) years.

The prisoners Kasoo wulud Laldharm (No. 11) and Sonoo wulud Bundhoo (No. 12) are acquitted and discharged.

* * * * * * * *

The Deputy Magistrate, in returning the case, charged with gang robbery under Clause 3rd, Section XXXVII. of Regulation XIV. This appears, however, a mere clerical error, as the Court, in sending the case to the Deputy Magistrate that the charge might be amended, observed that this charge should be under Clause 1st.

H. P. St.G. Tucker, Acting Session Judge.

Review by the Acting Session Judge.—The prisoners Nos. 1, 2, and 4 to 8 are charged with gang robbery by night, with force; in that they did, on the night of 23rd July 1856, forcibly and secretly carry off from the boats "Yeshwuntee" and "Toklee," when they were lying at anchor in the Deola Creek, twenty-six maunds of cotton, value about Rs. 78, the property of Wardhman Poonsee and Dhunjee Ibjee.

The prisoners Nos. 9 and 10 are charged with aiding and abetting in the above offence; in that they did, about 7 A. M. on the above date, plan the said gang robbery, and prisoner No. 3 with concealment of the same crime.

It would seem that on 25th July 1856, the prisoners No. 2 (Alee), No. 12 (Sonoo), and the witnesses Nos.

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7, 18, and 19 (Ludboodeen, Gunoo, and Tookaram) proceeded to Bombay with two carts containing seven bundles of cotton, and that, when at Kalbadavie, the witness Ludboodeen and the prisoner No. 2 (Alee) and the prisoner No. 12 (Sonoo, who has been acquitted by the Assistant Session Judge), quarrelled with Ludboodeen, upon which Ludboodeen gave information to a Policeman who was passing that the cotton they had with them was stolen property. The carts and the parties with them were taken to the Superintendent of Police in Bombay, where, after some hesitation, Ludboodeen named Dhunjee Ibjee and Wardhman Poonsee as the owners of the cotton, and charged prisoners Nos. 1, 2, 4, 5, 6, 7, and 8 with having stolen it, and the prisoners Nos. 9 and 10 with having been accessary to the robbery. A pardon has been given to Ludboodeen, and he is now the chief witness, against the prisoners. His testimony, being that of an accomplice, can only be received so far as it is corroborated by other independent evidence. Ludboodeen states that on the morning of the 23rd July he was called by prisoner No. 1 (Nuthoo) to the house of prisoner No. 9 (Ibrahim), and that he found the prisoners Nos. 1, 2, 4, 5, and 10, and one Kasoo, who has been acquitted by the Assistant Session Judge, assembled there. The robbery of the boats at anchor was then planned, and in the evening, at 7 or 7-30 P. M., the same parties, with the exception of the prisoners Nos. 9 and 10 and Kasoo, again met at the house of prisoner No. 9, and went to the Chendnee bunder, and embarked in two boats, in which there were the prisoners Nos. 6, 7, 8, and another person whom Ludboodeen does not know, and steered, to the pattimar "Yeshwuntee," which was boarded by prisoners Nos. 2, 4, 5, 6, and the unknown accomplice, who commenced opening the bales and taking cotton from them. The prisoner No. 3 (Shek Hosan, the Tindal of the boat) was aroused by the noise, but Lud-

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boodeen interposed and told him it was no use making any resistance, and *assured him and the Kalasees that he would cause the robbers to be apprehended* in Bombay. Five bags of cotton were then taken from his boat, and two more from the "Toklee," without disturbing the crew of that vessel. This cotton was taken to Nowghur, where Changoo the Patel (witness No. 17) took charge of it on the representations of Alee (prisoner No. 2). The witness Ludboodeen passed the night at Nowghur, while the others went back in the boats, but the following day Ludboodeen returned to Tanna, where he met prisoner No. 4 (Veerjee), who told him that the Patel Changoo had agreed for six rupees to take the cotton to the Bombay road, and that two carts had been hired to carry it to Bombay. Ludboodeen that evening joined these carts, in one of which was prisoner No. 2 (Alee), and they were afterwards joined by Sonoo, and all proceeded to Bombay, where Ludboodeen gave information as above stated.

Wardhman Poonsee (witness No. 8) and Dhunjee Ibjee (witness No. 9) declare that cotton has been taken from the bales which they respectively had on board the pattimars "Yeshwuntee" and "Toklee," and that the cotton found in the possession of the prisoner Alee and Ludboodeen was of the same description as the cotton with which those boats had been laden. Witnesses Nos. 14 and 15 (sailors on board the "Toklee") also depose that on the morning of the 24th they found that several bales on board their boats had been opened and cotton extracted therefrom, and that they sewed up the said bales. Soodkia (witness No. 13, a sailor on board the "Yeshwuntee") deposes to the fact of a robbery having been committed on board that boat, and that he recognised prisoners Nos. 2 and 5 and Ludboodeen among the robbers. This man was evidently accessary to the robbery, so that his evidence also is tainted, and can only be believed when corroborated.

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The witness No. 17 (Changoo, Patel of Nowghur) declares that the prisoner No. 2 (Alee), and Ludboodeen, and two Mahomedans whom he cannot point out, brought him the cotton, and that, on their promising him Rs. 4½, he took charge of it and afterwards made it over to Alee (prisoner No. 2) and Veerjee (prisoner No. 4), on their paying him the above sum. There are several discrepancies in the deposition now made by this witness and his previous declarations before the Foujdar and the Deputy Magistrate, and he cannot point out the way in which the cotton was taken from the village, from which it may be gathered that Ludboodeen's statement that Changoo took it himself is correct.

Changoo has stated that one Gunga Jeewa was with him when Alee and Veerjee (prisoners Nos. 2 and 4) came for the cotton; but Gunga Jeewa, when examined by the Deputy Magistrate, declared that only *one* Mahomedan came, not two.

The cartmen, Gunoo (witness No. 18) and Tookaram (witness No. 19), who took the cotton to Bombay, state they were hired by Veerjee (prisoner No. 4) for the service of Nuthoo (prisoner No. 1), and that Veerjee (prisoner No. 4) and Sonoo at first came to the carts, and that afterwards Veerjee went away and sent Alee (prisoner No. 2); that the cotton was picked up on the roadside, and that Alee, when questioned about it by the Peons whom they met, stated that it belonged to Nuthoo (prisoner No. 1), and showed a note from him (Nuthoo). This identical note was found on the prisoner No. 2 (Alee) when arrested, and it is a letter from Nuthoo (prisoner No. 1) to Lukmidas Khanjee of Bombay (witness No. 57), announcing the despatch of seven bundles of cotton, and directing that Rs. 3-12-0 were to be paid to the cartmen, and that the consignee was to follow the instructions of prisoner No. 4 (Veerjee) and Sonoo. The prisoner No. 1 admits that he wrote this note, but states

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that he did so for Ludboodeen. He is unable to explain why Ludboodeen's name is not entered in it.

Another witness, Koosal Kamaljee (No. 16), deposes that on the 25th July, about 2 P. M., he was sitting with Lukmidas Khanjee, when the latter was summoned to his father-in-law's, on the plea that four persons from Tanna wanted him. This witness accompanied Lukmidas, and found the prisoners No. 1 (Nuthoo), No. 9 (Ibrahim), No. 10 (Gopal), and a man named Tersee (discharged at the commencement of the trial), and that these persons said in his presence that the cotton seized by the Police was stolen, and that they would go to Tanna and bring forward false owners and witnesses. They then directed Lukmidas to put in bail for the prisoners Alee and Sonoo, and returned to Tanna in a buggy. The prisoner No. 1 (Nuthoo) admits that he did go to Bombay on the 25th in the railway with the prisoners No. 9 (Ibrahim) and No. 10 (Gopal), and that they returned together in a buggy. His witness, Lukmidas Khanjee (No. 57), admits that Nuthoo visited him on that day, and that he has for some time had dealings with Nuthoo and his father, and has had none with Ludboodeen. The prisoner No. 2 (Alee) admits to have been at Ibrahim's (prisoner No. 9) on the Wednesday stated by Ludboodeen, but denies that he heard any robbery planned. He also allows that he went with the stolen property to Bombay, but states that he did so by Ludboodeen's directions, who gave him the note (No. 20), and told him to say that the cotton was Nuthoo's, which he did. The prisoner No. 4 (Veerjee) admits that he hired the carts which took the cotton to Bombay. All these prisoners have tried, either in this Court or before the Magisterial Authorities, to prove *alibis*, but without success.

The note No. 20, the depositions of the cartmen (witnesses Nos. 18 and 19), and of the witness Changoo

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(No. 17), sufficiently corroborate the statement of witness Ludboodeen in regard to prisoners Nos. 1, 2, and 4, and establish that they were accessary to the robbery, which I hold to have been committed *without force.* With the exception of Ludboodeen's statement, there is no evidence that prisoners Nos. 1 and 4 were actually present at the removal of the cotton, and so they can, I think, be convicted of aiding only. The witnesses Nos. 17 (Changoo) and No. 13 (Soodkia) both bear Ludboodeen out in his assertion that Alee (prisoner No. 2) was present at the robbery, and his conviction of the chief offence is therefore good.

The prisoners Nos. 6, 7, and 8 admitted to the Foujdar their complicity in the robbery. They now say that they did not know what they said on that occasion, but the witnesses Nos. 21 and 22 depose that these prisoners admitted the truth of their first statements before them.

The witnesses produced by them to prove that they were elsewhere on the night referred to have, in the most palpable manner, deposed falsely. The confessions of these prisoners, although now retracted, are a sufficient corroboration of the accomplice's evidence, and their conviction is therefore good.

The prisoner No. 3 admits that the robbery took place before his eyes, and that he gave no information to the owners of the cotton or to the Police. There is therefore no reason to interfere with the conviction of concealment. This man was the Tindal of the vessel, and in charge of the goods. The robbery could not have been effected without his connivance. He should, I consider, have been treated as a principal offender, and been sentenced to a more severe punishment than any of the others.

The evidence for the prosecution only seeks to establish that prisoners No. 9 and 10 assisted at the consultation which took place when the robbery was planned,

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and on this alleged act of theirs a charge of aiding has been founded. The fact of a person being present when a crime is planned will not, in my opinion, amount to aiding in that offence, and there is no evidence but the unsupported statement of Ludboobeen that these persons took part in the consultation. Both these prisoners must be acquitted. In like manner there is only the evidence of the two accomplices, Ludboodeen and Soodkia, to prove that prisoner No. 5 (Kasum) took part in the robbery; and as it has been shown that prior to this robbery both Kasum (prisoner No. 5) and his father (prisoner No. 9) had declared before public officers their suspicions that Ludboodeen had been concerned in other robberies, the accusations brought by this individual against them must be regarded with great suspicion. I consider this prisoner also entitled to an acquittal. Under the above view I modify the judgment of the Assistant Session Judge as follows:—

The prisoners No. 2 (Alee), No. 6 (Shimgia), No. 7 (Shinwar), No. 8 (Jooja), convicted of gang robbery by night, without force, and the sentence of four years' imprisonment with hard labour passed on the former is confirmed, and the sentences of two years' imprisonment with hard labour passed on the three latter are not interfered with.

The prisoners No. 1 (Nuthoo) and No. 2 (Veerjee) are convicted of aiding in gang robbery by night, without force, and sentenced each to four years' imprisonment with hard labour, the term awarded to them by the Assistant Session Judge.

The prisoners No. 5 (Kasum), No. 9 (Ibrahim), and No. 10 (Gopal) are acquitted and discharged.

* * * * * * *

The Deputy Magistrate should have caused the witnesses named by the prisoners to him at the time of commitment to attend at this Court, and the Assistant

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Session Judge should not have closed the case without taking measures to obtain the attendance of these persons.

In the Sudder Foujdaree Adawlut; Minute by Mr. Frere.—The prisoners Shimgia, Shinwar, and Jooja must be acquitted, for, though the Session Judge says the witnesses Nos. 21 and 22 (Witul Balkristna and Bhow Apajee) deposed that these prisoners admitted the truth of their first statements before them, they do no such thing. The witnesses cannot recognise the prisoners. They merely depose to confessions made by three Kolees, and though the prisoners are Kolees, and were the only Kolees then before the Court, still that does not make them the Kolees who admitted their complicity before the Foujdar, and that Mr. Tucker at any rate ought to have seen, even if it escaped the observation of his less experienced assistant, Mr. Warden.

It should also be noticed that the depositions in the Murathee differ greatly from the translation the Assistant Session Judge has given of them in his proceedings.

R. Keays, Acting Puisne Judge.

Minute by Mr. Keays.—I do not consider the charge is proved against prisoners No. 6 (Shimgia), No. 7 (Shinwar), and No. 8 (Jooja). They are alleged to have confessed, but their confessions are not proved, and they have been subsequently retracted, and as there does not appear to be anything to corroborate these confessions, the convictions against them must be annulled.

Resolution of the Sudder Foujdaree Adawlut.—The conviction and sentence on prisoners Shimgia bin Fukeera, Shinwar bin Ittoor, and Jooja bin Posha, are annulled, and these prisoners to be discharged.

R. Keays, Acting Puisne Judge.

Further Minute by Mr. Keays.—I have not the slightest doubt regarding the guilt of prisoners Nos. 1, 2, 3, and 4. With reference to prisoner No. 1 (Nuthoo) it appears to me that the deposition of the approver, Ludboodeen, has received ample corroboration from the

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note recorded No. 20, corroborated as that is again by the evidence of the cartmen (witnesses Nos. 18 and 19). The same evidence also clearly establishes the complicity of Veerjee and Alee. The prisoner No. 3 admits that he was present and looking on when his employer was plundered, and it is certain that he made no complaint, and did not bring the circumstances to the notice of the Police. I would confirm the conviction and sentence.

Further Resolution of the Sudder Foujdaree Adawlut.—It is contended that, with the exception of the evidence of Ludboodeen, there is no evidence against Nuthoo, and that Ludboodeen being an accomplice, his evidence is not valid without corroboration. The note which Nuthoo admits he wrote, and which does not bear out his assertion that he wrote it for Ludboodeen; his presence in Bombay with Luxmidas; and the evidence of Kooshal, Gunoo, and Tookaram, are strengthened by Ludboodeen's evidence as it affects Nuthoo, and render it, in the Court's opinion, quite sufficient for conviction.

Nothing is urged on behalf of Alee, and, as regards Shek Hosun the Tindal, and Veerjee who hired the carts, the Court agree with the Session Judge in his opinion of their guilt, and their petitions must be rejected.

There is no corroborative evidence against Ibrahim and Gopal, and they were rightly acquitted; but Mr. Tucker is to be cautioned against the idea that the fact of a person being present when a crime is planned will not amount to aiding, for though literally it might not, still Clause 5th, Section I. Regulation XIV. A. D. 1827, makes concealment of gang robbery, whether before or after the fact, punishable equally with instigation or aid, so that, if there had been corroboration, these prisoners ought to have been convicted of concealment.

The Court do not think the Session Judge's procedure was right in taking the fresh evidence he required him-

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self. They think he himself ought to have tried this case, and not have referred it to his Assistant; but, having referred it, he should, supposing the Interpretation of the 12th September 1846 to be applicable to the inferior Court, as it is to the Sudder Foujdaree Adawlut, have returned the case to his Assistant, to take the evidence. The Session Judge can, under Clause 4th, Section XII. Regulation XIII. A. D. 1827, which he quotes, take a trial referred to an Assistant again into his own hands, but that does not appear to the Court to contemplate his making further inquiry himself into a case completed by his Assistant, and the Interpretation he quotes points out a different course.

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Present, { WILLIAM HENRY HARRISON, ROBERT KEAYS, } Puisne Judges.

[Case No. 85 of the Calendar of the Poona Sessions Court for 1856. Committed by the Assistant Magistrate, J. S. INVERARITY, on the 18th October 1856. Tried by the Acting Session Judge, C. M. HARRISON, on the 29th and 30th October, and 6th November 1856. Proceedings submitted for confirmation of the Sudder Foujdaree Adawlut, by the Acting Session Judge.]

Murder.

Prisoner.—Genoo bin Kasee, Koonbee, aged 25.

Charge.—Murder (Regulation XIV. of 1827, Section XXVI. Clause 1st); in having, on Tuesday, the 7th October 1856, (corresponding to Mungulwar, Ashwin Shood 8th, Shuké 1778,) in a field near the town of Khair, Talooka Khair, Zillah Poona, assaulted one Jaroo Bhaee wulud Manick Bhaee, aged about thirty-five years, and, striking him on the head and throat with an axe, then and there deprived him of life.

C. M. Harrison, Acting Session Judge.

Finding and Sentence by the Sessions Court.—The prisoner is charged with murder, and pleads not guilty.

The deceased Jaroo Bhaee is reported to have had an improper intimacy with the prisoner's wife, and he was

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seen, at about 4 or 5 P. M. on the day specified in the indictment, by the witness No. 5 (Shidoo) cutting grass with her in the latter's field. The deceased's wife (Khondoo) would also appear to have gone to cut grass in the same field, for she says after she had commenced the prisoner came and forbade her, and took away what she had cut from her, and that he followed her to a well near at hand, where she went to drink, and complained of her having done so to her husband, who also came there. She states that she then left them standing on an embankment near the well and the prisoner's field, he (the prisoner) having an axe in his hand like the one before the Court. Shortly afterwards the prisoner and the deceased were seen by the witnesses Yemoona and her husband Shidoo (Nos. 4 and 5), to whom the adjoining field belongs, struggling together on the edge of the jowaree crop and towards the embankment, from whence the prisoner dragged back the deceased into the crop; and the latter says he then saw the prisoner raise his axe and strike a blow with it, but the deceased being down he could not, on account of the crop, see its effect. They, however, both state that shortly afterwards the prisoner came out of the crop alone, and went off quickly towards Wurgaum, and that on Shidoo approaching the spot where the struggle took place, he saw a bundle tied up in a blanket, with the feet of a man sticking out of it. He then procured assistance, and, on the bundle being subsequently opened in the presence of the Police, it was found to contain the body of Jaroo Bhaee, with the throat cut, and several wounds on the head and face. These witnesses agree in the account they give of the assault as far as it was seen by them, and the only discrepancy in their statements has reference to what took place subsequent thereto. The prisoner was apprehended on the spot, to which he seems to have returned when the inquiry was being made by the Police, and, when

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his person and clothes were examined the next morning, spots of blood were discovered upon him; a piece was found to have been freshly torn off the end of his turban; the marks of nail scratches on his neck and back, and a mark of blood near the left ankle (see the evidence of Mahomed, witness No. 2). A piece of cloth stained with blood was found the next morning by Anundrow (witness No. 7), one of the members of the Inquest, partially buried where he had seen the prisoner sitting, on his way to hold the Inquest, at a distance of about fifty cubits from where the body was lying, and this, on being compared with the prisoner's turban, was found exactly to correspond with the torn end. The prisoner's statement before the Police and Assistant Magistrate was to the effect that he saw the murder perpetrated by Shidoo and Narain with an axe and reaping-hook, and that, when they came to a well where he had in the meantime gone, with their hands all bloody, they *sprinkled* some of the blood over him without his observing it at the time; that the scratches found on his person must have been made by himself; that the stain near his ankle was occasioned by Shidoo, when prostrated before him begging him not to tell, putting his bloody hand on his foot; and that the end of his turban was stained at the same time by Narain taking hold of it with his bloody hand. He stated that he did not observe it at the time, but after he had been apprehended, seeing that it was so stained by the light of a fire, and fearing that it would lead to his being convicted of the murder, he tore off the stained end and buried it in the sand; and he admitted the piece shown to him to be the same. He now repudiates this statement, which has accordingly been proved and recorded against him for the prosecution (No. 11), and his defence before this Court is an *alibi*, that he was, from noon until the lighting of lamps, at Wurgaum *in the house* of Bhagoo Gowbana, and to prove this he calls

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four witnesses. Of these Bhagoo Gowbana states that the prisoner came to him at *Marotee's temple* in Wurgaum at 2 P. M. and remained there playing at 'songtia' until dusk; that, as they were playing, his elbow struck the prisoner's nose and made it bleed, and that he wiped off the blood with his blanket and the end of his turban. Two other witnesses, Luxoomun bin Hurjee and Saloo bin Gunoo, with some discrepancies, tell the same story; and another, Andoo bin Gunoojee, states that he and the prisoner left their hamlet (Kooheenkur) on the day of the murder at noon, the former for Khair and the latter for Wurgaum, and that, whilst sitting by the body after dark, he saw the prisoner passing. Such evidence is, however, obviously not credible, and holding the charge to be fully brought home to the prisoner by that recorded for the prosecution, he is convicted of murder; in having, on Tuesday, the 7th October 1856, (corresponding to Mungulwar, Ashwin Shood 8th, Shuké 1778,) in a field near the town of Khair, Talooka Khair, Zillah Poona, assaulted one Jaroo Bhaee wulud Manick Bhaee, aged about thirty-five years, and, striking him on the head and throat with an axe, then and there deprived him of life.

And after duly considering the offence committed, and the punishment provided for the same by Clause 4th, Section XXVI. Regulation XIV. of 1827, the following sentence is passed:—

That you, Genoo bin Kasee Koobinkur, be hanged by the neck until you be dead, at the usual place of execution at Poona. Subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

* * * * * * * *

The Court notices, for the information of the committing Authority, that evidence regarding when and where the axe was found should have been forwarded, also that the evidence of the prisoner's wife is not ad-

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missible against her husband, and should not have been entered in his proceedings.

Letter from the Acting Session Judge to the Registrar of the Sudder Foujdaree Adawlut.—I have the honour to submit, for the confirmation of the Judges of the Sudder Foujdaree Adawlut, a counterpart of my proceedings held in the case of the prisoner Genoo bin Kasee, convicted of murder, and sentenced to be hanged by the neck until he be dead, at the usual place of execution at Poona.

The deposition of the prisoner's wife not being admissible as evidence either for or against her husband, I have not referred to it in the judgment I have recorded in this case; but I deem it my duty, at the same time, to call the Judges' attention to the statement it contains, in case they may with reference thereto see fit to commute the sentence of capital punishment I have considered myself called upon to pass.

W. H. Harrison, Puisne Judge.

In the Sudder Foujdaree Adawlut; Minute by Mr. Harrison.—In this case it is proved, in my opinion, that the deceased was killed by the prisoner, and the only question is, whether the homicide was murder or not. The prisoner's wife deposed before the Assistant Magistrate that the deceased, who (as appears from the testimony of other witnesses also) was suspected of improper intimacy with her, was surprised having forcible connection with her, and immediately assaulted by her husband. This evidence the Session Judge rejected according to the rule which excludes the testimony of a wife for or against her husband. The Inquest also suggest it as the only apparent motive for the murder that the deceased was found by prisoner in improper intimacy with his wife. It is difficult, however, to believe that provocation to the extent suggested did exist in this case; the prisoner has never pleaded it; and although his advocate before the Sudder Fouj-

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daree Adawlut has taken that line of defence for him, it is one that should be made out satisfactorily before it can be allowed the weight sought to be obtained for it. It appears that the woman Kasee was in the field near to where the deceased was, and also the latter's wife, as well as the witnesses Nos. 4 and 5 who witnessed the assault; but there is no corroboration of the suggested provocation in their depositions.

It cannot be concluded that the deceased was surprised in the act of adultery with the woman Kasee, and so met his death at the hands of her husband. The murder seems to have occurred in a sudden quarrel, and, as Kasee was in the field, the cause may have been connected with previous jealousy of deceased. That he witnessed their connection was, however, so obvious a plea in extenuation, that it could scarcely have failed to be raised by the accused himself, if it were true. Under the circumstances, I should confirm the conviction, and sentence the prisoner to transportation.

R. Keays, Puisne Judge.

Minute by Mr. Keays.—I have no doubt that the prisoner committed the murder. Two witnesses declare that they saw him do so. He was apprehended, and the next morning spots of blood were found on his clothes, for which he is altogether unable to give an account; and looking at the attempt made by prisoner to conceal the piece of his turban which was much blood-stained, and his failing to prove the plea set up by him, and which plea is, in my opinion, entirely opposed to the supposition that the prisoner killed the deceased when in the act of adultery with his wife,—a fact which I may further remark the prisoner himself denies in his petition of appeal,—I consider the charge fully proved. The statement of the prisoner's wife, which should not have been recorded by the Magistrate, proves nothing, and no dependence can be placed on it. I consider that the prisoner has been rightly convicted of murder, but, on the

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recommendation to mercy submitted by the Session Judge, I am willing to accord to the proposal of my brother Judge, and commute the sentence to one of transportation.

Resolution of the Sudder Foujdaree Adawlut.—The conviction is confirmed, and prisoner sentenced to transportation for life.

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